

# HUMAN RIGHTS ACCOUNTABILITY THROUGH TREATY BODIES: EXAMINING HUMAN RIGHTS TREATY MONITORING FOR WATER AND SANITATION

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*Framing scholarship on human rights accountability through treaty bodies, this article examines the water and sanitation content of state human rights reporting to the United Nations Committee on Economic, Social and Cultural Rights. In this novel application of analytic coding methods to state human rights reports, the authors trace the relationship between human rights advancements on water and sanitation and treaty body monitoring of water and sanitation systems. These results raise an imperative for universal human rights indicators on the rights to water and sanitation, providing an empirical basis to develop universal indicators that would streamline reporting to human rights treaty bodies, facilitate monitoring of state reports, and ensure accountability for human rights implementation.*

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The authors are grateful to: Maria Virginia Brás Gomes, Catarina de Albuquerque, Eibe Riedel, and Margaret Satterthwaite for their insightful reflections on water and sanitation monitoring through human rights treaty bodies; to Katelyn Blanchard, Robert Kohut, Hunter McGuire, Maximilian Seunik, and Violette Zhu for their dedicated research assistance and yearlong effort to code state reports to the Committee on Economic, Social and Cultural Rights; and to Jamie Bartram, Tara J. Melish, Georgina Mendoza Solorio, Jeroen Klok, and Madoka Saji for their thoughtful comments on previous drafts of this article.

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## INTRODUCTION

Human rights treaty bodies, given an explicit state mandate to monitor human rights treaty implementation, have become the principle mechanism of treaty monitoring to ensure human rights accountability. With the end of the Cold War and an expansion of the United Nations (UN) human rights system, there has been a dramatic increase in state ratifications of human rights treaties and in reporting to human rights treaty bodies. Though treaty bodies were long seen as ineffectual in monitoring states, recent reform initiatives have renewed the promise of treaty monitoring for human rights accountability. This accountability is structured by state reports to human rights treaty bodies. Examining the process of monitoring state reports, this article assesses human rights treaty monitoring of the rights to water and sanitation, analyzing the evolving content of these rights in state human rights reports and guiding ongoing efforts to streamline water and sanitation reporting to human rights treaty bodies.

Given the pressing implications of inadequate water and sanitation, which have undermined a wide array of economic development and public health goals, the UN system has looked to human rights as a means to

address these pervasive harms. Initially elaborated through interpretations of core human rights treaties, water and sanitation—which are both essential for life and instrumental to realizing a wide range of human rights—have come to be seen as independent human rights. As human rights have expanded in scope and influence, the UN General Assembly’s 2010 Resolution on the Human Right to Water and Sanitation has proclaimed international political recognition of this distinct right. Such efforts to develop international law have created a policy basis by which the implementation of human rights can structure water and sanitation systems, but for this right to take hold, there must be international monitoring mechanisms in place to ensure state accountability.

Crucial to understanding human rights monitoring, this research examines the content of state human rights reporting on water and sanitation to human rights treaty bodies. There is a research imperative to assess the information that states report to treaty bodies, and this study employs water and sanitation as a case study for linking the development of human rights indicators to the content of state human rights reports. Through analytic coding of state human rights reports, this research traces the relationship between human rights advancements and state reporting on water and sanitation, providing an empirical foundation for understanding human rights reports and framing human rights indicators. With the UN currently seeking to strengthen the process of human rights treaty monitoring through human rights treaty bodies, this research on the rights to water and sanitation offers generalizable guidelines to streamline reporting and facilitate accountability for the implementation of human rights.

By analyzing state reports to the UN Committee on Economic, Social and Cultural Rights (CESCR or Committee), this article examines how state reports have evolved alongside human rights advancements and considers how streamlined reporting could be more conducive to accountability for the realization of the human rights to water and sanitation. This article opens in Part I by considering the role of monitoring as a basis for human rights accountability, examining the development of treaty bodies as a basis for monitoring treaty implementation, and assessing the functions of state reports as a basis for treaty body review. Focused on this reporting process, Part II outlines the structure and content of state reports to the CESCR (the treaty body responsible for monitoring implementation of the International Covenant on Economic, Social and Cultural Rights) and chronicles the Committee’s burgeoning focus on water and sanitation reporting. As the human rights to water and sanitation have advanced, this research seeks to understand the effects of changing water

concerns, international human rights norms, and treaty body reporting guidelines on state reports. To explore the evolving content of water and sanitation reporting, Part III reviews the research methods by which the authors examined information on water and sanitation in state human rights reports. Part IV reports the results of this coding research, analyzing how the evolving content of state reports corresponds with advancements in: (a) the implementation of human rights, (b) the development of human rights norms, and (c) the specificity of reporting guidelines. With these results demonstrating weak correlations between human rights advancements on water and sanitation and state reporting on water and sanitation, this systematic examination of the content of state reports draws attention to generalizable weaknesses in state reporting to human rights treaty bodies. Based upon these results, Part V discusses the importance of universal human rights indicators as a basis for increasing the efficiency and effectiveness of human rights reporting, proposing specific indicators to streamline reporting on water and sanitation. Where indicator-based reporting would provide consistency in human rights monitoring and focus states on the progressive realization of rights, this article concludes that the operationalization of evidence-based indicators for the human rights to water and sanitation will be necessary to ensure accountability for the implementation of human rights obligations.

## I. THE TREATY MONITORING PROCESS

Human rights treaty bodies facilitate accountability for human rights realization through treaty monitoring. By signing international human rights treaties, states parties acknowledge a legal obligation to respect, protect, and fulfill the rights of their peoples. However, with treaty ratification alone showing a weak association with state practice, the ratification of international treaties by national governments is seen as only the first step in the effective realization of rights.<sup>1</sup> To realize rights, states must implement their human rights obligations through national policy and government practice. Operating under a specific mandate from states parties, treaty bodies were created to monitor the national implementation of international human rights treaties, advising states on the paths to realize

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1. See generally Emilie M. Hafner-Burton, *International Regimes for Human Rights*, 15 ANNU. REV. POL. SCI. 265 (2012) (concluding that the ratification of treaties alone is not universally correlated with the realization of human rights); Wade M. Cole, *Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981–2007*, 117 AM. J. SOC. 1131 (2012) (finding that institutionalized monitoring is a means to alter state human rights practice).

human rights obligations.<sup>2</sup> As the human rights paradigm shifts from the international development of human rights treaties to the national implementation of human rights obligations, policymakers have turned to the treaty monitoring process as a basis to review state reports and thereby facilitate human rights accountability.<sup>3</sup>

#### A. Monitoring as Accountability

Despite a dramatic increase in state ratifications of human rights treaties, studies continue to show an ambiguous causal relationship between treaty ratification and human rights realization,<sup>4</sup> leading to the conclusion that human rights accountability requires an independent means to monitor the influence of treaty ratification on state implementation.<sup>5</sup> With states parties accepting specific obligations to report on their treaty implementation efforts, international monitoring seeks to facilitate accountability in the absence of a global judiciary.<sup>6</sup> As part of an

2. *Monitoring the Core International Human Rights Treaties*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS (OHCHR), <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Jan. 15, 2014). As discussed *infra* Part II, this monitoring has particular relevance to the realization of economic, social and cultural rights, which, bound by the principle of progressive realization, necessitate state guidance on the extent and pace of realization.

3. See generally Martin Scheinin, *Economic, Social and Cultural Rights*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK* 29, 29 (Asbjorn Eide et al. eds., 2d ed. 2001).

4. See generally Todd Landman, *The Political Science of Human Rights*, 35 *BRIT. J. POL. SCI.* 549 (2005); see also Alexis Palmer et al., *Does Ratification of Human-Rights Treaties Have Effects on Population Health?*, 373 *LANCET* 1987, 1987 (2009) (finding no correlation between treaty ratification and public health outcomes). For a discussion of the reasons why states would ratify international human rights treaties disingenuously, without any intention to implement human rights norms, see Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 *YALE L. J.* 1935, 2008 (2002); Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 *U. PA. J. INT’L L.* 1, 1 (2012) (advancing a “credible threat theory” to conceptualize why states are more likely to ratify human rights treaties where their treaty enforcement mechanisms are weak). But see Beth A. Simmons, *From Ratification to Compliance: Quantitative Evidence on the Spiral Model*, in *THE PERSISTENT POWER OF HUMAN RIGHTS: FROM COMMITMENT TO COMPLIANCE* 43, 54 (Thomas Risse et al. eds., 2013) (critiquing these studies for considering global trends in a single regression, failing to consider “the political and social mechanisms that would link . . . treaty ratification to the possibility of an improved rights outcome”).

5. Hathaway, *supra* note 4, at 2006 (“To the extent that monitoring and enforcement are effective, the expression of the commitment to the goals of such treaties is largely indivisible from the act of complying with the terms of the treaties.”); Dutton, *supra* note 4, at 25, 26 (“Where an international human rights treaty contains stronger enforcement mechanisms, states should view the treaty as a credible threat and be more likely to commit only if they intend to and can comply with the treaty’s terms.”).

6. See Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 *INT’L ORG.* 689, 693 (2008) (“[T]he general consensus, even among UN skeptics, is that shining a spotlight on a country’s abuses can bring about better practices, especially when those shining the spotlight respect human rights.” (citing American Bar Association, *Task Force on Reform of the United Nations Commission on Human Rights*, A.B.A. SEC. INT’L L. (2005))). For a

overlapping national and international system of human rights accountability mechanisms—recently complemented by the UN’s Universal Periodic Review system<sup>7</sup> and treaty bodies’ respective individual complaint mechanisms<sup>8</sup>—the monitoring process interacts with and supports other forms of accountability to assure the implementation of human rights.<sup>9</sup>

International monitoring provides an external check on state efforts to implement human rights obligations, facilitating accountability under international law.<sup>10</sup> Alleviating the “enforcement problem” in human rights, international monitoring serves to influence states through:

- Information Diffusion – with international institutions serving as a conduit for transferring information from national governments to civil society,<sup>11</sup> and
- Policy Persuasion – with international institutions influencing state perceptions of human rights implementation and compelling shifts in national practice.<sup>12</sup>

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discussion of the quasi-judicial role of human rights treaty bodies, see *infra* note 20 and accompanying text.

7. Established in 2006, the Universal Periodic Review (UPR) process assesses objective and reliable information on the fulfillment by each state of its human rights obligations and commitments. G.A. Res. 60/251, ¶ 5(e), U.N. Doc. A/RES/60/251 (Apr. 3, 2006). Through a forty-seven person working group, the UPR process examines the human rights situation in each state, with a working group engaging national capacity building through the sharing of best practices and the provision of technical assistance and financial resources. The UPR process has only gone through one complete cycle of reviews, and has shown potential as a monitoring force for human rights realization. *Basic Facts About the UPR*, OHCHR, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited Oct. 25, 2015).

8. Geir Ulfstein, *Individual Complaints*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 73, 74–75 (Helen Keller & Geir Ulfstein eds., 2012) (discussing the evolution of individual complaint mechanisms under each international human rights treaty).

9. John Morijn, *Reforming United Nations Human Rights Treaty Monitoring Reform*, 58 NETH. INT’L L. REV. 295, 299 (2011) (noting parallel systems for international human rights protection).

10. See generally Michael O’Flaherty & Pei-Lun Tsai, *Periodic Reporting: The Backbone of the UN Treaty Body Review Procedures*, in NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY: WHAT FUTURE FOR THE UN TREATY BODY SYSTEM AND THE HUMAN RIGHTS COUNCIL PROCEDURES? 37 (M. Cherif Bassiouni & William A. Schabas eds., 2012).

11. Michael O’Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HUM. RTS. L. REV. 27, 33–34 (2006); see also Emilie M. Hafner-Burton, *A Social Science of Human Rights*, 51 J. PEACE RES. 273, 281–82 (2014) (reviewing research on the pathways through which information dissemination causes changes in human rights implementation).

12. See generally BETH SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009) (examining how treaty ratification influences rights realization through domestic politics).

The human rights treaty monitoring process seeks to deter violations and encourage implementation, spurring programmatic modifications and policy reforms by states parties.<sup>13</sup> However, monitoring fails to provide accountability where assessments do not reflect human rights norms or national political realities,<sup>14</sup> creating a tension between the legal development of human rights and the practical implementation of those rights.<sup>15</sup> At the crossroads of this tension lie human rights treaty bodies, international institutions that serve to monitor human rights to assess their implementation.

## B. Treaty Bodies as a Basis for Monitoring

Human rights treaty bodies monitor state implementation of the core international human rights treaties,<sup>16</sup> facilitating accountability for rights realization through formal review of state reports, constructive dialogue with state delegations, and concluding observations on state obligations. Comprised of independent experts, who are elected in their individual capacity rather than as representatives of their states,<sup>17</sup> treaty bodies have international legal authority to assess whether states parties are

13. See James Crawford, *The UN Human Rights Treaty System: A System in Crisis?*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 1, 1 (Philip Alston & James Crawford eds., 2000).

14. Andrew Clapham, *UN Human Rights Reporting Procedures: An NGO Perspective*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING*, *supra* note 13, at 175, 188.

15. See Hafner-Burton, *supra* note 1 (reviewing studies on the influence of human rights institutions); see also *infra* notes 343–350 and accompanying text (discussing this conflict between the theoretical and practical in the development and implementation of human rights indicators).

16. Within the UN system, the term “core human rights treaties” refers to the following ten instruments, each with a corresponding treaty monitoring body: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT); Convention on the Rights of the Child (CRC); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW); Convention on the Rights of Persons with Disabilities (CRPD); and International Convention for the Protection of All Persons from Enforced Disappearance (CPED). *The Core International Human Rights Instruments and Their Monitoring Bodies*, OHCHR, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (last visited Oct. 26, 2015).

17. Jane Connors, *An Analysis and Evaluation of the System of State Reporting*, in *THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY* 3, 12 (Anne F. Bayefsky ed., 2000); SUZANNE EGAN, *THE UNITED NATIONS HUMAN RIGHTS TREATY SYSTEM: LAW AND PROCEDURE* 84–85 (2011) (noting the independence of CESCR members and highlighting concerns about charges of treaty body member politicization); see also G.A. Res. 68/268, ¶ 36, U.N. Doc. A/RES/68/268 (Apr. 9, 2014) (noting that treaty bodies and states are encouraged to adhere to a set of guidelines to maintain independence and ensure impartiality).

implementing their treaty obligations. With each core human rights treaty having its own corresponding human rights treaty body, these international institutions perform two interconnected functions:

- (1) Clarifying treaty provisions through general comments, recommendations, or statements;<sup>18</sup> and
- (2) Reviewing state reports on the implementation of those rights within their monitoring purview.<sup>19</sup>

While human rights treaty bodies do not have judicial powers and, thus, cannot impose legally binding obligations on states parties,<sup>20</sup> the international establishment of treaty bodies has endowed their recommendations with legal authority to clarify treaty provisions for state parties and to review state efforts to implement treaty obligations.<sup>21</sup> Translating international law into national practice, these treaty body authorities influence states and galvanize advocates to take action to realize rights.<sup>22</sup>

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18. Developed by treaty bodies, general comments serve as published interpretations of the content of human rights under the respective treaty. *See generally* Aslan Abashidze, *The Complementary Role of General Comments in Enhancing the Implementation of Treaty Bodies' Recommendations and Views (The Example of CESCR)*, in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY*, *supra* note 10, at 137. *But cf.* OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, *THE UNITED NATIONS HUMAN RIGHTS TREATY SYSTEM: FACT SHEET NO. 30* (2012), <http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf> [hereinafter *UN HUMAN RIGHTS TREATY SYSTEM: FACT SHEET NO. 30*] (listing the core functions of treaty bodies to include only the examination of states parties' reports, the examination of individual complaints, and the conduct of inquiries).

19. *See generally*, U.N. Secretary-General, *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, U.N. Doc. HRI/GEN/2/Rev.6 (June 3, 2009) [hereinafter *Compilation of Guidelines*]. In addition to these two functions, many treaty bodies also have *de jure* authority to hear interstate complaints (although no state has yet to bring a complaint against another state through the human rights treaty monitoring system) and individual complaints (although, as discussed *infra* note 74, this has just begun for economic, social and cultural rights and has not yet resulted in any decisions).

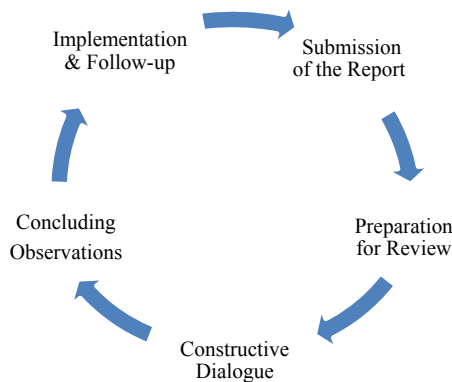
20. *See* JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 85 (3d ed. 2007) (discussing the weaknesses of the Human Rights Committee to compel states to improve their practices); *see also* Walter Kälin, *Examination of State Reports*, in *UN HUMAN RIGHTS TREATY BODIES*, *supra* note 8, at 16, 35 (recognizing that "the reporting procedure is neither a kind of a quasi-judicial procedure to identify violations of the convention in question, nor an enforcement mechanism with coercive elements").

21. *See* O'Flaherty, *supra* note 11, at 33–34.

22. *See* Dutton, *supra* note 4, at 31 (recognizing that "even if they are not 'strong' enforcement mechanisms, they may still help prompt states to improve their respect for individual human rights").



### Treaty Body Monitoring Process



To support monitoring of the underlying treaty, states parties are required to submit an initial report about the human rights conditions of their country (usually within one to two years of treaty ratification) and, thereafter, to submit periodic reports (every four to five years) updating the treaty body on efforts to implement the treaty domestically. Reliant on government self-reporting, the treaty body considers these

state reports in conjunction with UN agency reports and NGO “shadow reports,” which often challenge select areas of the state report and provide treaty body members with an independent understanding and in-depth analysis of the human rights conditions in each state.<sup>23</sup> Because treaty bodies receive public reports and briefings from both states parties and non-state actors, this expert-led assessment is well positioned to create a detailed snapshot of the operationalization of human rights in a country and to support constructive dialogue with states parties on the implementation of treaty obligations.<sup>24</sup>

In this “constructive dialogue,” the state party sends a delegation to meet directly with the treaty body to present the state’s report, respond to questions, and discuss the state’s implementation of the underlying treaty.<sup>25</sup>

23. See Andrew Clapham, *Defining the Role of Non-Governmental Organizations with Regard to the UN Human Rights Treaty Bodies*, in *THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY*, *supra* note 17, at 183, 186–87 (noting different ways in which treaty bodies involve international and national NGOs in their work to provide non-state sources of information); Philip Lynch & Ben Schokman, *Taking Human Rights from the Grassroots to Geneva...and Back: Strengthening the Relationship Between UN Treaty Bodies and NGOs*, in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY: WHAT FUTURE FOR THE UN TREATY BODY SYSTEM AND THE HUMAN RIGHTS COUNCIL PROCEDURES?*, *supra* note 10, 173, 180–89 (detailing NGO recommendations for reforming the treaty body system).

24. See Mark Thomson, *Defining the Role of Non-Governmental Organizations: Splendid Isolation or Better Use of NGO Expertise*, in *THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY*, *supra* note 17, at 219. See generally, *UN HUMAN RIGHTS TREATY SYSTEM: FACT SHEET NO. 30*, *supra* note 18.

25. Felice D. Gaer, *Implementing International Human Rights Norms: UN Human Rights Treaty Bodies and NGOs*, 2 J. HUM. RTS. 339, 341–43 (2003) (discussing the development of the constructive dialogue process within human rights treaty bodies).

Treaty body members prepare for this dialogue in pre-sessional meetings, where they examine the various reports, identify specific areas of concern, and draft a list of issues to be discussed.<sup>26</sup> While constructive dialogue provides the treaty body with a forum to question state delegations directly, this process is not thought of as adversarial; treaty bodies do not pass judgment on states, but rather seek to advise governments on their implementation of human rights obligations.<sup>27</sup> Enlisting additional sources of information, the treaty body may hear during the constructive dialogue from NGOs, UN specialized agencies, and national human rights institutions.<sup>28</sup>

After this formal review, treaty bodies issue “concluding observations,” wherein the treaty body publicly recognizes state efforts to realize international obligations, notes areas of concern with specific rights, and recommends future steps to implement the treaty.<sup>29</sup> Pressing state parties to undertake the reforms recommended in the concluding observations, treaty bodies request that states address the recommendations in both immediate follow-up procedures and subsequent periodic reports.<sup>30</sup> With each periodic report building on the one before it, this monitoring process before human rights treaty bodies forms a virtuous cycle in each round of reporting, with these continuing assessments building momentum for the implementation of rights.

Yet, the treaty monitoring process has long been criticized for its procedural ineffectiveness in assessing state implementation of human

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26. Under the High Commissioner’s 2012 proposal, the treaty bodies would submit standardized questionnaires to state parties, with the list of issues shortened to no more than twenty-five questions and 2,500 words. United Nations High Commissioner for Human Rights, *Strengthening the United Nations Human Rights Treaty Body System: A Report by the United Nations High Commissioner for Human Rights*, 50 (June 2012) (by Navanethem Pillay) [hereinafter *Strengthening the United Nations Human Rights Treaty Body System*].

27. See *Compilation of Guidelines*, *supra* note 19. For a criticism of the constructive dialogue process, see generally Rachael Lorna Johnstone, *Streamlining the Constructive Dialogue: Efficiency from States’ Perspectives*, in *NEW CHALLENGES FOR THE UN HUMAN RIGHTS MACHINERY*, *supra* note 10, at 59.

28. See generally Lynch & Schokman, *supra* note 23, at 173 (addressing a lack of coherence in treaty body modes of engagement with NGOs and national human rights institutions).

29. For background discussion on the evolution of treaty body practice in providing recommendations to each state through concluding observations, see O’Flaherty, *supra* note 11, at 28–32; Kälin, *supra* note 20, at 36 (noting that human right treaty bodies did not adopt concluding observations until the end of the Cold War, confining their accountability function before then to reviewing reports and conducting constructive dialogue).

30. But cf. Kälin, *supra* note 20, at 65 (noting that, in the recent practice of the Human Rights Committee, “no state provided fully satisfactory responses on all the points raised [in the follow-up procedure], meaning none fully implemented the respective recommendations”).

rights.<sup>31</sup> As a series of outside proposals sought to reform the treaty body system,<sup>32</sup> little changed in each treaty body's distinct processes of monitoring, with these monitoring constraints: leading to delays of up to seven years between reporting and constructive dialogue, setting back accountability for rights realization, and blunting momentum for state implementation.<sup>33</sup> Despite a dramatic rise in treaty ratifications in the past decade, the UN General Assembly has repeatedly declined requests to allocate additional resources for treaty monitoring, putting pressure on the treaty body system to do more work with less funding.<sup>34</sup> Treaty bodies have responded to these constraints by seeking to "streamline" treaty monitoring for operational efficiency, with committee representatives meeting together in annual "inter-committee meetings" to promote a unified approach to human rights monitoring.<sup>35</sup>

To strengthen the human rights treaty bodies, the UN General Assembly called in 2009 for additional efforts to support the treaty monitoring process.<sup>36</sup> Following an exhaustive consultation across the

31. Rapporteur of the Committee on Economic, Social and Cultural Rights, *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights*, ¶¶ 36–38, U.N. Doc. A/44/668 (Nov. 8, 1989) (by Philip Alston) (noting the administrative burdens on states in participating with multiple human rights treaty bodies); ANNE F. BAYESKY, *THE UN HUMAN RIGHTS SYSTEM: UNIVERSALITY AT THE CROSSROADS* 64 (2001) (noting that "the quality [of treaty body observations] has been impeded by a number of factors, in particular: barriers to the submission of information, lack of human resources to sift and analyse information, impediments to an effective dialogue and the lack of independence or expertise of significant numbers of treaty body members").

32. See *infra* notes 36–38 and accompanying text; see generally, e.g., U.N. Secretariat, *Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body – Rep. by the Secretariat*, U.N. Doc. HRI/MC/2006/2 (Mar. 22, 2006) (proposing a permanent unified treaty body).

33. Helen Keller & Geir Ulfstein, *Conclusions*, in *UN HUMAN RIGHTS TREATY BODIES*, *supra* note 8, at 414, 418–19.

34. See CHRISTEN BROECKER & MICHAEL O'FLAHERTY, *UNIVERSAL RIGHTS GRP., THE OUTCOME OF THE GENERAL ASSEMBLY'S TREATY BODY STRENGTHENING PROCESS: AN IMPORTANT MILESTONE ON A LONGER JOURNEY* 20 (2014) (noting that "65% of the costs of the Treaty Body system in 2012 came from document production, translation, and interpretation (conference services)"). This large expenditure toward treaty body reporting has resulted in fewer resources for treaty body deliberations.

35. Nico Schrijver, *Paving the Way Towards... One Worldwide Human Rights Treaty!*, 29 NETH. Q. OF HUM. RTS. 257, 259 (2011) (noting that the core treaties have received widespread ratification and proposing "institutionalised co-operation and joint monitoring [across treaty bodies]... for a better and more coherent implementation of human rights"). In addition to inter-committee meetings, monitoring harmonization also takes place through annual meetings of treaty body chairpersons.

36. See Michael O'Flaherty, *The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System*, 28 NETH. Q. HUM. RTS. 116, 121–27 (2010). On the process of developing the High Commissioner's 2012 proposals, see generally Michael O'Flaherty, *Reform of the UN Human Rights Treaty Body System: Locating the Dublin Statement*, 10 HUM. RTS. L. REV. 319 (2010); Suzanne Egan, *Strengthening the United Nations Human Rights Treaty Body System*, 13 HUM. RTS. L. REV. 209, 214 (2013) (noting that "the 'strengthening process' relied from the outset

human rights system, the UN High Commissioner for Human Rights (High Commissioner) detailed a series of reform proposals in 2012 to harmonize the practices of human rights treaty bodies, streamlining the monitoring process for all treaty bodies through:

- (1) a fixed reporting schedule to structure predictable and manageable reporting to each treaty body every five years;
- (2) a simplified reporting procedure, with standardized reporting guidelines to facilitate shorter reports and thereby limit reporting, review, and translation costs;
- (3) an aligned methodology for focused constructive dialogue and concluding observations; and
- (4) a common procedure for communications with UN entities, civil society, and individual complainants.<sup>37</sup>

In anticipation of the High Commissioner's report, several states called for a separate, state-driven reform of the treaty body system.<sup>38</sup> This intergovernmental review process concluded in an April 2014 UN General Assembly Resolution, through which states:

- (1) recognized the need for increased state compliance and participation with the treaty body process, supporting states through the provision of advisory services, technical assistance, and capacity-building to assist in the preparation of reports;<sup>39</sup>
- (2) encouraged streamlining in the process of treaty body functions by limiting both the length of state reports<sup>40</sup> and treaty body responses,<sup>41</sup> and by allocating a maximum of three official working languages in order to reduce both translation times and costs;<sup>42</sup>

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on inputs and ideas from the stakeholders themselves and was specifically designed to be an 'open, bottom-up, transparent and participatory' process" (quoting *The High Commissioner's Treaty Body Strengthening Initiative: Information Note*, Mar. 15 2012, at 3)).

37. See *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 37–67. For a description of the political measures that led to the High Commissioner's report, see *id.* at 9–11.

38. See generally G.A. Res. 66/254, U.N. Doc. A/RES/66/254 (Feb. 23, 2012).

39. G.A. Res. 68/268, *supra* note 17, ¶ 17.

40. *Id.* ¶ 15.

41. *Id.* ¶ 16.

42. *Id.* ¶ 30.

- (3) called for increased transparency of treaty bodies through webcast meetings;<sup>43</sup> and
- (4) pledged to review the state of the treaty body system again prior to the end of 2020.<sup>44</sup>

Notwithstanding such renewed support from states parties, increased efficiency in monitoring practices, and improved coordination across treaty bodies, this growing discourse on treaty monitoring processes has never addressed the content of state reports to treaty bodies. As these treaty monitoring reforms lay the groundwork for expanded state reporting, such a rapid increase in the number of state reports now creates an imperative to understand the substance of these reports.

### C. State Reporting to Treaty Bodies

Central to human rights treaty monitoring, state reporting to treaty bodies constitutes a continuing obligation under international law, reaffirming state commitments to implement the rights set out in a treaty.<sup>45</sup> The state report provides a basis for reviewing progress, identifying obstacles, and assessing prospects to implement rights.<sup>46</sup> Where the human rights systems lacks systematic mechanisms to monitor the activities undertaken by governments to implement international human rights law, state self-reporting can be used:

- (a) by the treaty body in the development of concluding observations and general comments;<sup>47</sup>

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43. *Id.* ¶ 22.

44. *Id.* ¶ 41.

45. Rep. of the Inter-Comm. Tech. Working Grp., Harmonized Guidelines on Reporting Under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Documents, ¶ 8, U.N. Doc. HRI/MC/2006/3 (May 10, 2006) (“The reporting process constitutes an essential element in the continuing commitment of a State to respect, protect and fulfil the rights set out in the treaties to which it is party.”); *see also* Anne Gallagher, *Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System*, 19 HUM. RTS. Q. 283, 306 (1997) (“The reporting system is the basic *raison d’être* of all treaty bodies and represents their best chance to affect the practices and attitudes of individual states.”).

46. *See* Rep. of the Secretariat, *Guidelines on an Expanded Core Document and Treaty-Specific Targeted Reports and Harmonized Guidelines on Reporting Under the International Human Rights Treaties*, 17–18, U.N. Doc. HRI/MC/2004/3 (June 9, 2004).

47. As the process of translating state reports into general comments has been outlined by the CESCR, it: “[E]ndeavours, through its general comments, to make the experience gained so far through the examination of these reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting

- (b) by individuals to support complaints to the treaty body alleging a violation of rights;<sup>48</sup> and
- (c) by other accountability mechanisms, such as the UN Universal Periodic Review<sup>49</sup> and national and regional human rights institutions.<sup>50</sup>



Yet while many scholars have focused on the process of international monitoring by the treaty bodies,<sup>51</sup> few have focused on the content of state reports to these treaty bodies.

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procedures and to stimulate the activities of the States parties, the international organizations and the specialized agencies concerned in achieving progressively and effectively the full realization of the rights recognized in the Covenant. Whenever necessary, the Committee may, in the light of the experience of States parties and of the conclusions which it has drawn therefrom, revise and update its general comments.” Rep. of the Comm. on Econ., Soc. & Cultural Rights on Its Third Session, annex III, ¶ 3, U.N. Doc. E/1989/22 (Feb. 24, 1989). For an understanding of how this translation plays out in the context of the CESCR’s general comment on a right to water, see *infra* note 218 and accompanying text.

48. See *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 17 (noting that eight of the nine human rights treaty bodies now have the ability to receive individual communications or complaints).

49. See *supra* note 7 and accompanying text (describing the UPR system).

50. UN HUMAN RIGHTS TREATY SYSTEM: FACT SHEET NO. 30, *supra* note 18, at 43 (noting that national human rights institutes “also follow up the national implementation of the recommendations of treaty bodies and can report on its [the state’s] success or failure”).

Supporting the international treaty monitoring process, the national preparation of a state periodic report has an independent accountability function, with governments engaging in reflexive self-assessment at the national level,<sup>52</sup> raising awareness of human rights obligations among government officials,<sup>53</sup> and considering policy reforms to implement treaty obligations.<sup>54</sup> The preparation of periodic reports is intended to be a participatory process, through which widespread national dialogue contributes to the collection of information for the government to draft the state report.<sup>55</sup> As noted in the 2006 Harmonized Reporting Guidelines,

[t]he reporting process should encourage and facilitate, at the national level, public scrutiny of government policies and constructive engagement with relevant actors of civil society conducted in a spirit of cooperation and mutual respect, with the aim of advancing the enjoyment by all of the rights protected by the relevant convention.<sup>56</sup>

Rather than a bureaucratic exercise, this participatory process creates opportunities for governments, NGOs, and civil society to learn from past reviews and engage in substantive debates regarding national priorities, successes, and obstacles in implementing human rights.<sup>57</sup> Such national dialogue, an accountability mechanism unto itself, is intended to feed into

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51. Cf., Kälin, *supra* note 20, at 16 (arguing that “the examination of state reports is the key mechanism established at the universal level to monitor the implementation of treaty obligations by contracting states”); O’Flaherty, *supra* note 11, at 27 (arguing, as a member of the Human Rights Committee for the ICCPR, that “the issuance of concluding observations is the single most important activity of human rights treaty bodies”).

52. See O’Flaherty & Tsai, *supra* note 10, at 37.

53. Kälin, *supra* note 20, at 39 (noting that “the reporting procedure provides a unique chance for awareness-raising and institutional learning”).

54. Rep. of the Inter-Comm. Tech. Working Grp., *supra* note 45, ¶ 9 (“States parties should see the process of preparing their reports for the treaty bodies not only as an aspect of the fulfillment of their international obligations, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation.”).

55. See Connors, *supra* note 17, at 10 (noting that states frequently fail to take civil society participation into account in preparing treaty body reports); see also Laura Theytaz-Bergman, *State Reporting and the Role of Non-Governmental Organizations*, in *THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY*, *supra* note 17, at 45, 50–51 (arguing that NGOs should be more involved in report preparation, looking to positive NGO contributions in reporting to the Committee on the Rights of the Child).

56. Rep. of the Inter-Comm. Tech. Working Grp., *supra* note 45, ¶ 10.

57. Rachel Brett, *State Reporting: An NGO Perspective*, in *THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY*, *supra* note 17, at 57, 60; see also JULIE MERTUS, *THE UNITED NATIONS AND HUMAN RIGHTS: A GUIDE FOR A NEW ERA* 71 (2d ed. 2009) (noting that the “reporting process can be an important impetus for review and action at the domestic level as well as at the international level”); Kälin, *supra* note 20, at 40 (“Learning about obstacles in implementing human rights is a particularly important aspect of the reporting procedure.”).

the international monitoring process, with governments thereafter submitting their report to the UN Secretary-General, where it is then processed by the Secretariat of the relevant treaty body (located in the Office of the High Commissioner) and translated into the treaty body's working languages.<sup>58</sup>

States parties report to human rights treaty bodies through:

- A common core document;
- Initial reports following treaty ratification; and
- Periodic reports on each human rights treaty.

The common core document is the foundation for all state reporting. To reduce duplicative reporting to various treaty bodies, this sixty to eighty page core document seeks to include background information applicable to every human rights treaty, with sections providing:

- (1) A brief overview of “the political, social, economic, and cultural context in which human rights are implemented in the State concerned;”
- (2) A description of the state's human rights framework; and
- (3) Information about how the state is promoting non-discrimination and equality and remedying human rights violations.<sup>59</sup>

However, these guidelines provide little guidance on what relevant data should be included in the Common Core Document rather than in the treaty specific reports,<sup>60</sup> and as a result, they have proven ineffective in spurring consistent common core reporting.<sup>61</sup> Specific to the subject of this article, where the common core document guidelines contain no specific reporting requirement on water or sanitation conditions, such reporting is relegated to the reporting requirements of individual human rights treaty bodies.

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58. UN HUMAN RIGHTS TREATY SYSTEM: FACT SHEET NO. 30, *supra* note 18, at 21.

59. *Compilation of Guidelines*, *supra* note 19.

60. Egan, *supra* note 36, at 12 (concluding that “the 2006 Guidelines contain sparse guidance for States on what to include in the [Common Core Document], or how to manage appropriate allocation of information in the [Common Core Document] and in treaty specific reports”).

61. See *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 51 (noting that only fifty-eight states produced a common core document between 2006 and 2012); Johnstone, *supra* note 27, at 70–79 (critiquing a lack of consistency across common core reports).



Building from the common core document, the core human rights treaty bodies have set up mechanisms for initial and periodic reporting. Each treaty monitoring body has been largely responsible for creating its own reporting guidelines to specify the information requested from states, and, thereby, for framing state reports specific to the substantive obligations of each respective treaty.<sup>62</sup> Given a lack of consistency in early reporting guidelines, however, state reports were widely viewed as vehicles for self-serving praise of national policy without reference to human rights standards.<sup>63</sup>

Recognizing how these divergent processes led to inconsistency and redundancy of reported information across treaty bodies, UN Secretary-General Kofi Annan urged human rights treaty bodies to standardize their reporting requirements.<sup>64</sup> Adopted at the Fifth Inter-Committee Meeting, the 2006 Harmonized Reporting Guidelines include formatting instructions for an expanded common core document and more uniform treaty-specific state reports.<sup>65</sup> Although human rights treaty bodies have come to standardize the length and form of state reports in accordance with these Harmonized Reporting Guidelines,<sup>66</sup> the content of state reports remains tied to the obligations of the underlying treaty.<sup>67</sup> Even as both the High Commissioner's 2012 report and the General Assembly's 2014 resolution seek to move treaty monitoring toward a simplified reporting process,<sup>68</sup> these proposals will not lead to any change in the content of state reports, which is governed exclusively by each human rights treaty body.

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62. *See Compilation of Guidelines*, *supra* note 19, at 129–36 (June 3, 2009).

63. Connors, *supra* note 17, at 10 (noting that state reports were sometimes so inadequate that treaty bodies requested their withdrawal).

64. U.N. Secretary-General, *Strengthening of the United Nations: An Agenda for Further Change*, U.N. Doc. A/57/387 (Sept. 9, 2002).

65. Rep. of the Inter-Comm. Tech. Working Grp., *supra* note 45, ¶¶ 19–23.

66. U.N. Secretary-General, *Strengthening of the United Nations: An Agenda for Further Change*, *supra* note 64, ¶ 54, (urging human rights treaty bodies to standardize their independent reporting guidelines). In standardizing reporting guidelines, the 2006 Harmonized Reporting Guidelines included formatting instructions for an expanded sixty to eighty-page common core document and more uniform treaty-specific state reports, including a sixty-page initial report and forty-page reports.

67. *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 51–53.

68. *See supra* notes 38–40 and accompanying text (reviewing the Intergovernmental Process of the General Assembly on Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System).

## II. REPORTING TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The CESCR has become the principal human rights treaty body in monitoring state obligations for safe drinking water and adequate sanitation.<sup>69</sup> Interpreting and monitoring the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR or Covenant), the CESCR was established in 1986 by the UN Economic and Social Council (ECOSOC) as a means to monitor reports submitted by states parties to the ICESCR.<sup>70</sup> This monitoring process has particular relevance to economic, social, and cultural rights, which, bound by the principle of progressive realization, necessitate guidance to states on the extent and pace of human rights implementation.<sup>71</sup> Building from the experiences and innovations of older human rights treaty bodies, the CESCR began its mandate with established processes to monitor states parties and with independent experts to engage the post-Cold War reinterpretations of economic, social and cultural rights.<sup>72</sup> Through the review of state reports pursuant to the

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69. In addition to reporting to the CESCR, states also report select information on water and sanitation to the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child, with both underlying treaties containing explicit recognition of water as a human right. See *infra* notes 94–95 and accompanying text (reviewing the evolution of water rights in treaty law); but cf. *infra* note 126 and accompanying text (confirming that the CESCR is the principal human rights treaty body for almost all state reporting on water and sanitation).

70. Econ. & Soc. Council Res. 1985/17 (May 28, 1985). While not relevant to its operations, the Committee is unique among treaty bodies because its mandate was established by an ECOSOC Resolution rather than by the treaty itself. Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 332, 350 (1987). For a history of the birth of the CESCR's interpretation and monitoring role, see Philip Alston & Bruno Simma, *The First Session of the UN Committee on Economic, Social and Cultural Rights*, 81 AM. J. INT'L L. 747 (1987); Philip Alston, *The Committee on Economic, Social and Cultural Rights*, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL (Philip Alston, ed. 1992).

71. In accordance with the principle of progressive realization, the ICESCR outlines that "[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/RES/21/2200 (Dec. 16, 1966) [hereinafter ICESCR]. As the Committee has noted, the principle of progressive realization is a recognition that the full realization of economic, social and cultural rights will be dependent on resources and that states will differ in their realization of rights based upon those resources. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *General Comment 3: The Nature of States Parties Obligations*, ¶ 9, U.N. Doc. E/1991/23 (Dec. 14, 1990). For a description of how the principle of progressive realization applies to the human right to water, see *infra* Part II.B.

72. See O'Flaherty, *supra* note 11, at 30 ("The Committee on Economic, Social and Cultural Rights (CESCR), in 1990, taking full advantage of its relative youth and freedom from an unyielding treaty mandate, commenced the practice of issuing sets of collective country-specific comments in the context of the review of periodic reports" (citations omitted)).

ICESCR, the eighteen member CESCR has authority to monitor the implementation of human rights to, among other things, an adequate standard of living, health, education, and water and sanitation.<sup>73</sup>

#### A. The Committee's Monitoring Process

The Committee contributes to the development and implementation of economic, social, and cultural rights by: (1) issuing general comments to interpret the normative content of the Covenant and (2) monitoring state party reports on the implementation of the rights of the Covenant.<sup>74</sup> In monitoring compliance with the obligations states have assumed under the ICESCR, the Committee employs state reporting to:

- (1) Review state laws that concern human rights;
- (2) Assess the actual human rights situation;
- (3) Draw attention to progress in realizing rights;
- (4) Facilitate public scrutiny;
- (5) Establish a basis for evaluating future progress;
- (6) Understand the problems faced in implementing the Covenant;  
and
- (7) Facilitate an exchange of information among states.<sup>75</sup>

Overcoming initial resistance from western states to monitoring economic, social, and cultural rights,<sup>76</sup> the Committee has come to receive widespread acceptance from states parties, international organizations, and civil society in its efforts to assess state implementation of the Covenant.<sup>77</sup> With 164

73. ICESCR, *supra* note 71, arts. 6–15.

74. Scott Leckie, *The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING*, *supra* note 13, at 129–31. In addition to general comments and periodic reviews, the 2008 ICESCR Optional Protocol permits individual complaints. G.A. Res. 63/117, annex, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, at 2 (Dec. 10, 2008). With this individual complaint mechanism having just gone into effect in May 2013, and with no complaints having been brought, this article does not yet consider this accountability mechanism ripe for analysis.

75. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *General Comment 1: Reporting by States Parties*, ¶ 9, U.N. Doc. E/1989/22 (1981).

76. See Andrew D. McNitt, *Some Thoughts on the Systematic Measurement of the Abuse of Human Rights*, in *HUMAN RIGHTS: THEORY AND MEASUREMENT* 89, 92 (David L. Cingranelli ed., 1988).

77. Malcolm Langford & Jeff A. King, *Committee on Economic, Social and Cultural Rights*, in *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* 477, 477 (Malcolm Langford ed., 2008) (arguing that “the ‘renaissance’ of economic, social and cultural rights . . . is partly attributable to the pioneering work of the UN Committee on Economic, Social and Cultural Rights”); Fons Coomans, *The International Covenant on Economic, Social and Cultural*

states now party to the ICESCR,<sup>78</sup> states parties are required to submit initial reports within two years of ratification, and, thereafter, to submit periodic reports every five years, limiting periodic reports to new developments, responses to previous concluding observations, and issues raised in the Committee's list of issues.<sup>79</sup>

In structuring state reports on economic, social, and cultural rights, the Committee's General Reporting Guidelines have established an article-by-article reporting process. The Committee first developed detailed Reporting Guidelines in 1991 to advise states parties on the form and content of their reports,<sup>80</sup> including specific measurements of progress for state implementation of economic, cultural, and social rights.<sup>81</sup> To facilitate the preparation and review of state reports, the Committee revised its Reporting Guidelines in November 2008 to take account of the UN's Harmonized Reporting Guidelines and to lay out treaty-specific guidelines for each substantive right (articles 1 to 15) of the ICESCR.<sup>82</sup> These revised Reporting Guidelines direct states parties in describing their progress to implement the ICESCR, address issues raised in general comments, and take steps in response to previous concluding observations. By delineating the specific content of reporting on each right, these Guidelines seek to frame more uniform and detailed reporting across ICESCR states parties.<sup>83</sup>

To monitor state reports, a subset of the Committee meets for several days in a pre-sessional working group to examine the state report, decide

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*Rights: From Stepchild to Full Member of the Human Rights Family*, in INTERNATIONAL HUMAN RIGHTS LAW IN A GLOBAL CONTEXT 293, 293–94 (Felipe Gómez Isa & Koen de Feyter eds., 2009).

78. For a full list of states parties to the ICESCR and dates of accession, see *International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Oct. 26, 2015).

79. WOUTER VANDENHOLE, THE PROCEDURES BEFORE THE UN HUMAN RIGHTS TREATY BODIES: DIVERGENCE OR CONVERGENCE? 125, 125 (2004).

80. U.N. Econ. & Soc. Council Res. E/C.12/1991/1 (June 17, 1991) [hereinafter *1991 Reporting Guidelines*].

81. VANDENHOLE, *supra* note 79, at 125–39. See also Scott Leckie, *An Overview and Appraisal of the Fifth Session of the UN Committee on Economic, Social and Cultural Rights*, 13 HUM. RTS. Q. 545, 562 (1991) (arguing that the initial Committee Reporting Guidelines were “excessively generalized, incomplete, and clearly in need of substantial revision” and noting that the 1991 Reporting Guidelines were a “major improvement,” with “[d]etailed questions . . . listed under each right, delineating the practical aspects of each of the rights found in the Covenant, as well as providing states parties with a basis on which to compile their reports”).

82. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, Note by the Secretary-General, annex, ¶ 2, U.N. Doc. E/C.12/2008/2 (Mar. 24, 2009) [hereinafter *2008 Reporting Guidelines*].

83. Coomans, *supra* note 77, at 300.

areas of concern, and prepare for constructive dialogue. An individual CESCR member assumes responsibility as the “country rapporteur” for each state report under consideration, and the working group drafts a “list of issues” for the state party to address in writing prior to the review session.<sup>84</sup> Informing the Committee’s consideration of state reports, the CESCR accepts written submissions, shadow reports, and oral statements from NGOs<sup>85</sup> and invites statements from UN specialized agencies and special rapporteurs.<sup>86</sup> With this information supporting the ensuing review session, the Committee meets three times each year for constructive dialogue with state representatives.<sup>87</sup> Over two consecutive three-hour sessions (three sessions for an initial report),<sup>88</sup> the Committee’s examination of a state report, whether initial or periodic, begins with the state delegation introducing the report in an opening statement. Individual Committee members then lead the state through questions on specific

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84. EGAN, *supra* note 17, at 142. To assure adequate and timely response from states, the Committee’s practice in developing lists of issues is often to list four or five issues as “priority concerns” and then include a larger list of up to twenty-five other matters to structure constructive dialogue.

85. Virginia Dandan, *The Committee on Economic, Social and Cultural Rights and Non-Governmental Organizations*, in THE UN HUMAN RIGHTS TREATY SYSTEM IN THE 21ST CENTURY, *supra* note 17, at 227–28; *see also* Coomans, *supra* note 77, at 302 (detailing the rules for NGO participation in Committee monitoring). For an analysis of evolving NGO involvement with the Committee, compare U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *NGO Participation in Activities of the Committee on Economic, Social. And Cultural Rights*, U.N. Doc. E/C/12/1993/WP.14 (May 12, 1993) with U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: NGO Participation in the Activities of the Committee on Economic, Social and Cultural Rights*, Note by the Secretariat, U.N. Doc. E/C.12/2000/6, (July 7, 2006).

86. On issues concerning water and sanitation, as discussed *infra*, the Committee has accepted submissions and testimony from the World Health Organization and the Special Rapporteur on the human right to safe drinking water and sanitation. Interview with Catarina de Albuquerque, Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, in Chapel Hill, N.C. (Oct. 25, 2013). In exceptional situations, the Committee is authorized to conduct on-site visits and country inquiries. *See* O’Flaherty, *supra* note 11, at 49. However, this basis of collecting information for CESCR consideration has largely been abandoned because of the cost of country missions and the alternative means of obtaining information. *Id.* at 50.

87. Where the Committee once met only two times each year, this workload has increased to three meetings following the treaty body strengthening process. *See supra* notes 35–38 and accompanying text. Despite an increase in workload, considering seven state reports per session in an effort to discharge its monitoring obligations more efficiently, the backlog of state reports with the CESCR has resulted in delays of over three years between report submission and constructive dialogue, a delay only slightly longer than that of longer standing treaty bodies.

88. Under the High Commissioner’s 2012 Proposal, all treaty bodies would limit the length of constructive dialogue to two sessions of no more than six hours. *See Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 57.

articles or issues.<sup>89</sup> Where questions remain unanswered at the end of the constructive dialogue, states parties are requested to follow-up on these questions in subsequent written submissions.<sup>90</sup> Culminating in concluding observations, this consensus document highlights both the positive steps taken by the state and the principal areas of Committee concern, providing detailed recommendations for ICESCR implementation and issues to be addressed in the next periodic report.

## B. Monitoring Water and Sanitation

In the evolution of the Committee's monitoring of economic, social, and cultural rights, human rights to water and sanitation have developed dramatically since the initial drafting of the ICESCR<sup>91</sup> – transitioning from implicit responsibility, to explicit obligation, and, finally, to independent right.<sup>92</sup> Acknowledging the importance that water holds for nearly all aspects of life, a human right to water was recognized for the first time at the 1977 UN Water Conference in Mar del Plata, which concluded that “all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.”<sup>93</sup> This limited agreement on “basic water needs” began to build consensus around more expansive norms (for both access to and quality of water) that would be elevated through the codification of a human right under international law.

89. The country rapporteur often opens the CESCR's questions by requesting state responses to previous reviews. EGAN, *supra* note 17, at 143.

90. *Id.* In exceptional circumstances, the Committee will proceed with consideration of a report in the absence of a state delegation. *Id.*

91. See Matthew Craven, *Some Thoughts on the Emergent Right to Water*, in THE HUMAN RIGHT TO WATER 37, 40–41 (Eibe Riedel & Peter Rothen eds., 2006) (finding that water was never discussed in the initial drafting of the ICESCR). In analyzing the historical reasoning that water and sanitation rights were not addressed specifically in the ICESCR (and the Universal Declaration of Human Rights before it), Catarina de Albuquerque has argued that “[m]any countries whose populations suffered from a lack of access to water and sanitation were not directly represented at the negotiating table.” CATARINA DE ALBUQUERQUE, *Introduction*, in REALISING THE HUMAN RIGHTS TO WATER AND SANITATION: A HANDBOOK BY THE UN SPECIAL RAPPORTEUR CATARINA DE ALBUQUERQUE 23 (2014) [hereinafter WATER AND SANITATION HANDBOOK].

92. Joyeeta Gupta et al., *The Human Right to Water: Moving Towards Consensus in a Fragmented World*, 19 RECIEL 294, 296–99 (2010).

93. U.N. Water Conference, *Rep. of the United Nations Water Conference*, 66, U.N. Doc. E/CONF.70/29 (Mar. 14–25, 1977). This UN agenda for water quantity and quality was rapidly extended to international health governance, with the 1978 Declaration of Alma-Ata laying out specific rights-based government obligations for primary health care, which included adequate supplies of safe water and basic sanitation. International Conference on Primary Health Care, *Declaration of Alma Ata*, 2–6 (Sept. 6–12, 1978).

Over the next decade, the UN General Assembly adopted treaties that extended and elaborated this explicit recognition of a right to water—alternately derived from human rights to an adequate standard of living and to the highest attainable standard of health—with:

- (a) The 1979 Convention on the Elimination of All Forms of Discrimination Against Women promulgating a state obligation to “ensure to [rural] women the right . . . to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply;”<sup>94</sup> and
- (b) The 1989 Convention on the Rights of the Child linking water and sanitation to children’s health in devising state obligations to “combat disease and malnutrition . . . through the provision of adequate nutritious food and clean drinking-water” and to ensure that children are “informed, have access to education and are supported in the basic knowledge of . . . hygiene and environmental sanitation.”<sup>95</sup>

With increases in global water inequalities, limitations on national water policies, and conflicts surrounding privatized water systems, advocates turned to human rights as a means to reframe water as a public good and a government responsibility.<sup>96</sup>

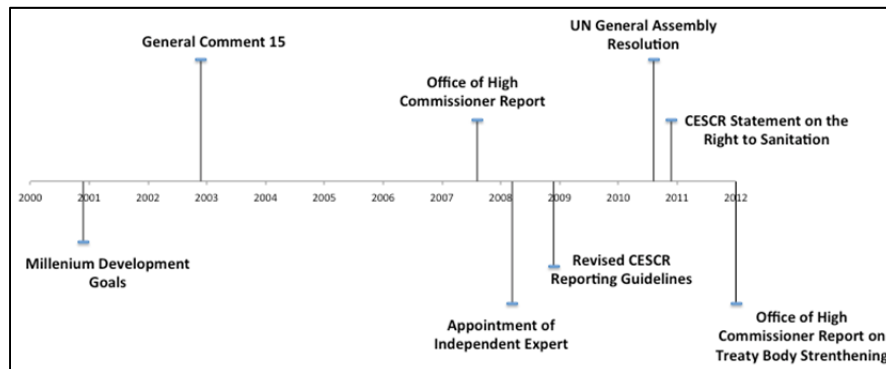
Taking up this human rights challenge, the CESCR has sought to codify human rights to water and sanitation, and in developing these evolving standards—buttressed by the UN General Assembly, Human Rights Council, Office of the High Commissioner, and Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation (Special Rapporteur)—the UN human rights system has clarified the expanding normative content of these distinct human rights.

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94. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, art. 16 (Dec. 18, 1979).

95. Convention on the Rights of the Child, G.A. Res. 44/25, art. 24(2) (Nov. 20, 1989).

96. See Erik B. Bluemel, *The Implications of Formulating a Human Right to Water*, 31 *ECOLOGY L.Q.* 957, 963–64 (2005) (considering the harms of conceptualizing water as an economic good); see also Amanda Cahill, *The Human Right to Water – A Right of Unique Status’: The Legal Status and Normative Content of the Right to Water*, 9 *INT’L J. HUM. RTS.* 389, 390–91 (2005) (examining the evolution of international legal standards on water).



Through its 2002 adoption of General Comment 15, the Committee authoritatively defined the scope and content of an independent human right to water, holding that “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”<sup>97</sup> Although water is not mentioned in the original text of the ICESCR, the CESCR would read it into the ICESCR based upon an interpretation of existing provisions,<sup>98</sup> finding in General Comment 15 that a right to water is normatively situated under the umbrella of the human right to an adequate standard of living (ICESCR, art. 11) and the human right to the highest attainable standard of physical and mental health (ICESCR, art. 12).<sup>99</sup> Drawing from the Committee’s experience in monitoring state reports,<sup>100</sup> the Committee reasoned that “an adequate

97. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 15: The Right to Water*, ¶ 1, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter *General Comment 15*]; but cf. Cahill, *supra* note 96 (arguing, based on the Committee’s reasoning, that water remains a “derivative” right and only exists in the context that water impacts on a right explicitly recognized in the ICESCR).

98. Malcolm Langford, *The United Nations Concept of Water as a Human Right: A New Paradigm for Old Problems?*, 21 WATER RESOURCES DEV. 273, 275 (2005). To understand the continuing debate on the interpretive authority of the Committee in developing General Comment 15, compare Takele Soboka Bulto, *The Emergence of the Human Right to Water in International Human Rights Law: Invention or Discovery?*, 12 MELB. J. INT’L L. 1, 11–14 (2011) (defending the CESCR’s interpretation of international law in deriving a right to water under the ICESCR) with Stephen Tully, *A Human Right to Access Water? A Critique of General Comment No. 15*, 23 NETH. Q. HUM. RTS. 35, 37–38 (2005) (finding General Comment 15 to be “revisionist” of the ICESCR and criticizing the CESCR for getting ahead of state water practice).

99. *General Comment 15*, *supra* note 97, ¶ 3; see also Eibe Riedel, *The Human Right to Water and the General Comment No. 15 of the CESCR*, in *THE HUMAN RIGHT TO WATER*, *supra* note 91, at 19, 19.

100. *General Comment 15*, *supra* note 97, ¶¶ 1, 5 (noting that the Committee has been “confronted continually with the widespread denial of the right to water in developing as well as developed countries”); cf. Riedel, *supra* note 99, at 25 (cataloguing instances where water issues were mentioned in the Committee’s concluding observations). But cf. Bulto, *supra* note 98, at 18 (finding that “the



amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements,” concluding: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>101</sup>

Framed by overarching obligations to respect (not interfere), protect (from third party interference), and fulfill (take positive steps to facilitate, promote, and provide for) the right to water, General Comment 15 articulates discrete state obligations:

- “[To] ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent diseases[;]” and
- “To take measures to prevent, treat, and control diseases linked to water, in particular ensuring access to adequate sanitation.”<sup>102</sup>

General Comment 15 thereby delineates the core obligations of a right to water, proscribes violations of those obligations, and outlines a policy roadmap for states to progressively realize access to water.<sup>103</sup> To monitor the progressive realization of the right to water, the Committee advocated the development of indicators, finding that:

The indicators should be designed to monitor, at the national and international levels, the State party’s obligations . . . [and] should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party’s territorial jurisdiction or under their control.<sup>104</sup>

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conclusion of the CESCR that its own consistent practice in its dialogue with ICESCR member states is strong enough on its own to give rise to state practice is questionable”). Where there continues to be debate on whether General Comment 15’s norms derive from state practice, this study presents an opportunity to empirically assess the prevalence of discussions on water rights in state reports prior to the promulgation of General Comment 15. *See infra* note 218 and accompanying text.

101. *General Comment 15*, *supra* note 97, ¶ 2; *see also id.* ¶¶ 10–16 (elaborating the normative content of the right to water).

102. *Id.* ¶ 37.

103. *See generally General Comment 15*, *supra* note 97; *see also* INGA T. WINKLER, *THE HUMAN RIGHT TO WATER: SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION* 38–41 (2012) (discussing the significance of General Comment 15 to the normative evolution of the human right to water).

104. *General Comment 15*, *supra* note 97, ¶ 53.

Following from this framework for the right to water in General Comment 15, the UN Human Rights Council requested the Office of the High Commissioner to report on human rights obligations related to equitable access to safe drinking water and sanitation.<sup>105</sup> The Office of the High Commissioner further expanded the normative content of the human right by: clarifying the meaning, scope, and content of “safe drinking water,” “sanitation,” and “access;” analyzing state obligations to respect, protect, and fulfill human rights; and outlining national and international mechanisms to monitor obligations to realize water and sanitation rights. With the 2007 report of the Office of the High Commissioner concluding that “it is now time to consider access to safe drinking water and sanitation as a human right,”<sup>106</sup> the Human Rights Council created the position of Independent Expert on human rights obligations related to access to safe drinking water and sanitation (Independent Expert) to further clarify these developing rights.<sup>107</sup>

Reflecting this rapidly evolving consensus on the normative content of these rights, the CESCR found its reporting guidelines under article 11 of the ICESCR to be inadequate on issues of water and sanitation,<sup>108</sup> adding a section on the right to water to the 2008 Reporting Guidelines<sup>109</sup> that requested state reports to:

48. Indicate:

(a) The measures taken to ensure adequate and affordable access to water that is sufficient and safe for personal and domestic uses for everyone;

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105. Human Rights Council Dec. 2/104, U.N. Doc. A/HRC/DEC/2/104 (Nov. 27, 2006).

106. Human Rights Council, *Rep. of the United Nations High Commissioner for Human Rights on the Scope and Content of the Relevant Human Rights Obligations Related to Equitable Access to Safe Drinking Water and Sanitation Under International Human Rights Instruments*, ¶ 66, U.N. Doc. A/HRC/6/3 (Aug. 16, 2007).

107. Human Rights Council Res. 7/22, U.N. Doc. A/HRC/RES/7/22 (Mar. 28, 2008).

108. Under the 1991 Reporting Guidelines, the Committee has requested from states only limited water and sanitation information and considered this information separately under both the right to adequate housing and right to health:

“Right to Adequate Housing

(ii) The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country).

Right to Health

4. Please provide, where available, indicators as defined by the WHO, relating to the following issues: . . . (b) Population access to safe water (please disaggregate urban/rural) . . .” 1991 Reporting Guidelines, *supra* note 80.

109. See *supra* note 82 and accompanying text (describing the revisions in the 2008 CESCR State Reporting Guidelines).

- (b) The percentage of households without access to sufficient and safe water in the dwelling or within its immediate vicinity, disaggregated by region and urban/rural population and the measures taken to improve the situation;
- (c) The measures taken to ensure that water services, whether privately or publicly provided, are affordable for everyone; and
- (d) The system in place to monitor the quality of water.

49. Provide information on education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.<sup>110</sup>

In addition to this independent section on the right to water, the Committee's 2008 Reporting Guidelines include separate water reporting responsibilities pursuant to article 11's obligations under the "right to adequate housing"<sup>111</sup> and article 12's health obligations "[t]o prevent, treat and control diseases linked to water and ensure access to adequate sanitation."<sup>112</sup>

The UN General Assembly's 2010 Resolution on the Human Right to Water and Sanitation has solidified political support for these evolving standards, recognizing international consensus on a distinct human right to water and sanitation.<sup>113</sup> In accordance with this Resolution (adopted by a vote of 122 – 0, with 41 abstentions), the UN General Assembly:

1. Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights; [and]
2. Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.<sup>114</sup>

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110. 2008 Reporting Guidelines, *supra* note 82, ¶¶ 48–49 (citations omitted). Among treaty monitoring bodies, this is the only set of guidelines that has a distinct section on the right to water.

111. *Id.* ¶ 50.

112. *Id.* ¶ 57(b).

113. Benjamin Mason Meier et al., *Implementing an Evolving Human Right Through Water and Sanitation Policy*, 15 WATER POL'Y 116, 122 (2013) ("This Resolution has given political recognition to the establishment of an independent right to water and sanitation, supporting the reasoning of General Comment 15 and declaring a state obligation that many now consider to bind all nations under customary international law." (citation omitted)); see Paula Gerber & Bruce Chen, *Recognition of the Human Right to Water: Has the Tide Turned?*, 36 ALTERNATIVE L.J. 21, 21 (2011) (concluding that "the debate about the existence of a human rights to water is now at an end").

114. G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (Aug. 3, 2010).

With this Resolution, states have created an international legal imperative to implement human rights to safe drinking water and adequate sanitation.<sup>115</sup> While such UN policy statements do not have the binding force of international law, these “soft law” pronouncements, subsequently reaffirmed in both the UN General Assembly and Human Rights Council,<sup>116</sup> give political legitimacy to these rights across the global community.<sup>117</sup> To clarify the sanitation components of UN General Assembly’s Resolution, the CESCR issued a 2010 Statement on the Right to Sanitation, drawing on the first report of the Independent Expert and reaffirming water and sanitation as interconnected but distinct human rights.<sup>118</sup>

### III. CODING STATE REPORTS TO THE COMMITTEE

Facilitating accountability for realizing the human rights to water and sanitation,<sup>119</sup> this international institutions research assesses the extent to which such human rights advancements are structuring state reporting, using the human rights to water and sanitation as a methodological template for empirical analysis of human rights implementation. As part of a growing human rights research agenda to understand the process of human rights implementation, the authors present a novel empirical

115. See Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Rep. on the Human Right to Safe Drinking Water and Sanitation*, U.N. Doc. A/66/255 (Aug. 3, 2011) (by Catarina de Albuquerque); see also *Right to Water and Sanitation is Legally Binding, Affirms Key UN Body*, UN NEWS CENTRE (Oct. 1, 2010), <http://www.un.org/apps/news/story.asp?NewsID=36308#>. ViqYSxCrSrt (arguing that “we have an even greater responsibility to concentrate all our efforts in the implementation and full realization of this essential right”).

116. G.A. Res. 68/157, U.N. Doc. A/RES/68/157 (Dec. 18, 2013); Human Rights Council Res. 24/18, U.N. Doc. A/HRC/RES/24/18 (Oct. 8, 2013).

117. See Rebecca Bates, *The Road to the Well: An Evaluation of the Customary Right to Water*, 19 REV. EUR. COMMUNITY & INT’L ENVTL. L. 282, 284–85 (2010) (arguing that the right to water, following from the UN resolutions, has now achieved international legal status as customary international law).

118. See Econ. & Soc. Council, *Statement on the Right to Sanitation*, ¶ 8, U.N. Doc. E/C.12/2010/1 (Nov. 19, 2010) (concluding—based upon existing obligations under human rights to an adequate standard of living, health, housing, and water—that “States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, ‘in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity’” (quoting Catarina de Albuquerque, Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, *Rep. of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation*, ¶ 63, UN Doc. A/HRC/12/24 (July 1, 2009) [hereinafter *Rep. of the Independent Expert*])).

119. While the UN General Assembly has referred to a singular “human right to water and sanitation,” this article—following the lead of the Committee and the Special Rapporteur—will address water and sanitation as interconnected but distinct rights. See DE ALBUQUERQUE, *supra* note 91, at 19; see also Keri Ellis & Loretta Feris, *The Right to Sanitation: Time to Delink from the Right to Water*, 36 HUM. RTS. Q. 607, 615–20 (2014) (conceptualizing an independent right to sanitation).

approach to examining the content of state reports to international human rights monitoring regimes.<sup>120</sup> Given a scarcity of cross-national data on human rights practices,<sup>121</sup> this study compiled a dataset of state human rights reports, qualitatively coding these reports based upon normative indicators of the human rights to water and sanitation. Such comparative research across state reports seeks to draw empirical generalizations on issues of human rights implementation and analyze the impacts of human rights institutions on state accountability.<sup>122</sup> Through systematic measurements across states and over time, this thematic analysis investigates the changing content of state reports to treaty bodies, highlighting the determinants of human rights implementation by examining the changing information reported to the CESCR on water and sanitation.

Although few have studied the contemporary practice of the CESCR,<sup>123</sup> this treaty body provides an unparalleled perspective on human rights treaty monitoring for water and sanitation.<sup>124</sup> The Committee has reviewed state reports for over twenty-five years, providing a consistent public record in chronicling state reporting. Because the Committee is less high-profile than other treaty bodies (*e.g.*, Human Rights Committee) and

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120. See generally Hafner-Burton, *supra* note 1 (reviewing empirical research on international legal regimes for human rights). Where it is exceedingly difficult to measure how international rights influence domestic practice in even a single state; see THOMAS RISSE ET AL., *THE POWER OF HUMAN RIGHTS* 17–18 (1999) (conceptualizing a “spiral model” to describe the influence of international norms on domestic action), this research seeks to capture a specific phase in the causal chain of human rights implementation across every state party to the ICESCR. See SIMMONS, *supra* note 12, at 52–53 (advocating textual analysis of “the language governments use” to describe efforts to implement rights).

121. See, *e.g.*, FREEDOM HOUSE, *FREEDOM IN THE WORLD* 2013 (2013); CIRI HUMAN RIGHTS DATA PROJECT, [www.humanrightsdata.com](http://www.humanrightsdata.com) (last visited Oct. 26, 2015).

122. Todd Landman, *Social Science Methods and Human Rights*, in *METHODS OF HUMAN RIGHTS RESEARCH* 19, 28–32 (Fons Coomans et al. eds., 2009); see Emilie Marie Hafner-Burton & James Ron, *Human Rights Institutions: Rhetoric and Efficacy*, 4 J. PEACE RES. 379, 381–82 (2007) (advocating both qualitative and quantitative research to link human rights rhetoric with human rights implementation and to disaggregate the institutions affecting human rights implementation); see, *e.g.*, Adèle Cassola et al., *Constitutional Protections in an Era of Increased Migration: Evidence from 193 Countries*, INT’L J. HUM. RTS. (forthcoming 2015) (coding national constitutions to assess rights-based protections of foreign citizens and stateless persons).

123. With robust scholarship following its initial creation; see generally MATTHEW C. R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* (1998), few have written about the CESCR’s monitoring since the 2008 enactment of its reporting guidelines. See Wade M. Cole, *Strong Walk and Cheap Talk: The Effect of the International Covenant of Economic, Social, and Cultural Rights on Policies and Practices*, 92 SOCIAL FORCES 165, 165 (2013) (“Economic and social rights are understudied, and the core international treaty covering these rights—the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—has rarely been analyzed.”).

124. See Riedel, *supra* note 99, at 25 (noting that few have written about the practice of the Committee with regard to water).

water is less high-profile than other rights (*e.g.*, torture), such a study is comparatively less challenged by the risk of political interference in the development of state reports.<sup>125</sup> With the CESCR proving highly influential in the development of human rights obligations for both water and sanitation,<sup>126</sup> an initial pilot study confirmed that the Committee is the human rights treaty body to which states report the vast majority of their implementation efforts on water and sanitation.

The authors hypothesized that the content of state human rights reporting on water and sanitation evolves in parallel with (and as a reflection of) the advancement of human rights for safe drinking water and adequate sanitation. Looking to how these advancements in the human rights to water and sanitation have impacted state reporting on water and sanitation, this study:

- (1) Examined state reports by their year of submission;
- (2) Divided state reports into four time periods, corresponding with seminal developments in the normative content of the human rights; and
- (3) Looked to changes in state reports following the CESCR reporting guidelines.

Through this systematic examination of state reports to the Committee, the authors could analyze the evolving content of human rights reporting on water and sanitation.

To ensure a comprehensive analysis of state reports, the authors began by working with a team of three researchers (the research team) to compile a thorough collection of every state report to the Committee. The research team obtained every state report to the Committee in digital form, either from the Office of the High Commissioner's website or the UN publications office.<sup>127</sup> As of September 9, 2013, there were 422 state reports submitted to the Committee from 141 states. Given a lack of formal

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125. Cf. Dinah PoKempner & Thomas Buergenthal, *Making Treaty Bodies Work: An Activist Perspective*, 91 PROCEEDINGS ANNUAL MEETING, AM SOC'Y INT'L L. 475, 478 (1997) (examining Georgia's 1997 report to the Human Rights Committee, wherein the state made no mention of several destructive civil wars, and misrepresented the views of a human rights monitor to say that there were "no political prisoners in Georgia"). Notwithstanding the comparatively lessened politicization of water and sanitation, these issues are not entirely without political interference, as states have been seen to politicize, *inter alia*, drought response, ecosystem quality, and sanitation rates. See generally Joyeeta Gupta & Claudia Pahl-Wostl, *Global Water Governance in the Context of Global and Multilevel Governance: Its Need, Form, and Challenges*, 18 ECOLOGY & SOC'Y 53 (2013).

126. See *supra* Part II.B.

127. *Human Rights Treaty Bodies*, CESCR, OHCHR, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=29](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=29) (last visited Oct. 26, 2015) [hereinafter *Human Rights Treaty Bodies*].

standards for the length and formatting of early state reports—and widespread inattention in these reports to issues of water and sanitation—this study considered only the 170 state reports submitted to the Committee between 1999 and 2012.<sup>128</sup>

This analytic coding study—using the qualitative analysis program ATLAS.ti (version 7) to systematically examine the thematic content of state reports to the CESCR over a fourteen-year period—provides a unique empirical window into the process of human rights implementation. Although previous studies have conducted documentary analysis on the work of human rights treaty bodies, these quantitative studies on reporting linguistics (often simply counting words, phrases, or paragraphs) have not been able to consider the qualitative depth and thematic complexity of human rights reporting.<sup>129</sup> Through qualitative coding, the authors could identify thematic trends in implementation efforts (over time and across countries), describe associations between the information reported (or not reported), and analyze the impact of both endogenous (*e.g.*, geography, resources, governance) and exogenous (*e.g.*, normative developments in human rights, human rights reporting guidelines) factors on the evolving thematic content of state reports.<sup>130</sup>

For the research team to identify the thematic content presented in state reports,<sup>131</sup> the authors developed codes to specify various indicators of the rights to water and sanitation, categorizing these codes by: the type of information presented, the normative content in that information, the overarching human rights principles, the population addressed, the context of the reference, the sphere of life, and the form of the data presented. The

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128. Given a time lag in translating state reports and making them available to the public, this study excluded 2013 and 2014 reports, which had not yet been translated and published on the OHCHR website at the start of this research.

129. Cf. Audrey R. Chapman, *Missed Opportunities: The Human Rights Gap in the Report of the Commission on Social Determinants of Health*, 10 J. HUM. RTS. 132, 140 (2011) (counting the occurrences of the terms “vulnerable, marginalized, and disadvantaged” in the CESCR’s concluding observations); Kälin, *supra* note 20, at 63 (“[I]f one compares the Concluding Observations adopted during the ninety-seventh to ninety-ninth sessions [of the Human Rights Committee] with those adopted when the previous report of the same country was examined, one can see that, while the overall number of paragraphs (usually between 25 and 30) has remained the same, the overall lengths of the documents have increased, indicating a more detailed treatment of issues addressed.”).

130. See, *e.g.*, Jody Heymann et al., *Constitutional Rights to Health, Public Health and Medical Care: The Status of Health Protections in 191 Countries*, 8 GLOBAL PUB. HEALTH: INT’L J. FOR RES., POL’Y & PRAC. 639, 641 (2013) (“In order to obtain the information on health rights necessary for this study, a coding team fluent in several official UN languages reviewed the constitutions of 191 UN member states as amended to two points in time: August 2007 and June 2011.”).

131. See GREG GUEST ET AL., *APPLIED THEMATIC ANALYSIS* 65 (2012) (defining a “theme” as describing “a unit of meaning that is observed in the data”).

authors delineated and defined each code deductively,<sup>132</sup> relying on UN frameworks and publications to translate universal human rights standards into the indicators to be coded in state reports.<sup>133</sup> For example, indicators of normative content were drawn initially from General Comment 15 (availability, accessibility, and quality), and, based on the work of the Special Rapporteur, the authors added an indicator on acceptability and also subdivided accessibility into “accessibility” (to refer to physical accessibility) and “affordability” (which refers to economic accessibility).<sup>134</sup> Further delineating the populations addressed in state reporting, the authors, in consultation with NGO actors, developed codes for the populations most likely to suffer from inequality in safe drinking water and adequate sanitation. Lastly, the authors sought to distinguish the context of references and the sphere of life addressed in state reports, based on statements and concluding observations of the CESCR, as a means to understand the different ways in which governments address water and sanitation.

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132. As a form of deductive coding, codes were developed based upon existing theoretical concepts, i.e., human rights indicators derived from external UN sources. This deductive process involves the development of a codebook before the review of state reports, as compared with inductive coding, which would have developed the codebook based upon the themes that emerged from a review of state reports. See Laila Burla et al., *From Text to Codings: Intercoder Reliability Assessment in Qualitative Content Analysis*, 57 NURSING RES. 113, 114 (2008) (describing the deductive coding process as “derived theoretically, taking into account the research question of the study, the state-of-the-art knowledge” and distinguishing the inductive coding process as “identified from the transcripts, providing the basis for generating new codes”); Elizabeth H. Bradley et al., *Qualitative Data Analysis for Health Services Research: Developing Taxonomy, Themes, and Theory*, 42 HEALTH SERVS. RES. 1758, 1763 (2007) (highlighting the benefits of the deductive approach to coding where “codes can help researchers integrate concepts already well known in the extant literature”).

133. See Office of the High Comm’r for Human Rights, *Rep. on Indicators for Promoting and Monitoring the Implementation of Human Rights*, U.N. Doc. HRI/MC/2008/3 (June 6, 2008) [hereinafter *OHCHR 2008 Rep. on Indicators*] (describing the process of translating universal norms into human rights indicators).

134. See *supra* note 104 and accompanying text (discussing the availability, accessibility, and quality framework in General Comment 15 and the expansion of that framework through the Committee’s Statement on the Right to Sanitation); see also CATARINA DE ALBUQUERQUE & VIRGINIA ROAF, *ON THE RIGHT TRACK: GOOD PRACTICES IN REALISING THE RIGHTS TO WATER AND SANITATION* 73–102 (2012) (discussing the relevance of context-specific notions of affordability in assessing human rights implementation).



Type of Information	Normative Content	Human Rights Principles	Population Addressed	Context of Reference	Sphere of Life	Form of Data
Structure	Affordability	Non-discrimination and Equality	Urban	Health	Home	Quantitative
Process	Quality	Participation	Rural	Sanitation	School	Qualitative
Outcome	Availability	Accountability	Women	Hygiene	Work-place	
	Accessibility	Sustainability	Children	Food & agriculture	Health Facility	
	Acceptability		Racial or Ethnic Minorities	Housing		
			Migrants	Facilities/ Services		
			Refugees	Education		
			Vulnerable Population	Resource Availability		
			Geographic Regions	Ecosystem Health		
			Disabilities	Emergencies		
			Older Persons	Water Source		
			Prisoners	Assistance & Cooperation		
				Land Tenure Status		

These codes and their definitions were compiled in a codebook, and to ensure accuracy in coding categories and code specifications, the codebook was shared with five experts on the normative content of the human rights to water and sanitation, who validated the coding categories and refined the definitions of specific coding terms.<sup>135</sup> Where the research team subsequently identified indicators that were not in the original codebook, as seen above in the addition of “disabilities” (as a population addressed) and “water source” (as a context of reference), these inductive codes were added to the codebook, and previously examined reports were re-coded to ensure methodological consistency across the coding process.<sup>136</sup>

Applying the codebook, the research team examined each state report at the paragraph level, identifying all individual paragraphs that address

135. See, e.g., Burla et al., *supra* note 132, at 114 (“A first version of the coding scheme was discussed by the research team, including two interview coders. An external expert in the field of qualitative health research gave additional advice, which led to further modifications.”).

136. See Kathleen M. MacQueen et al., *Codebook Development for Team-Based Qualitative Analysis*, 10 CULTURAL ANTHROPOLOGY METHODS 31, 35 (1998) (“Once the problems are identified and the codebook clarified, all previously coded text is reviewed and, if necessary, recoded so that it is consistent with the revised definitions.”).

water and sanitation.<sup>137</sup> The researchers then systematically scrutinized each identified paragraph to assign one or more codes from the codebook, tagging these codes in ATLAS.ti, as illustrated below in a paragraph from the Colombia (2000) report:

The quality of water supplies is maintained by means of physical and chemical treatment to ensure that the water is fit for human consumption. A total of 5,210 bacteriological analyses and 1,444 physical/chemical analyses were made country-wide in 2003. In 90.3 per cent of the cases the bacteriological analyses produced results consistent with the standards set by the Ministry, the Regional Coordinating Committee of Drinking Water and Sanitation Institutions for Central America and the Caribbean, WHO and PAHO; and 69.1 of the physical/chemical analyses met those standards.

Quantitative
Facilities/Services
Accountability
Health
Assistance and Cooperation
Quality
Sanitation
Outcome
Process

As these code assignments provide the results for this analysis, the authors have sought to ensure consistency in coding designations across the research team. Every member of the research team underwent technical training on the use of ATLAS.ti and substantive training on the indicators of the rights to water and sanitation. With each state report coded independently by two randomly-assigned members of the research team,<sup>138</sup> the research team met with the authors on a weekly basis to review the coding of state reports and consider missing or misapplied codes.<sup>139</sup> Facilitating a shared understanding of code definitions,<sup>140</sup> any disagreements among team members were discussed and resolved to ensure that similar reports would be coded consistently, adjusting the codebook to reflect new interpretations of code definitions.<sup>141</sup> This iterative coding

137. The autocoding dialogue for this study automatically highlighted paragraphs in ATLAS.ti that included any of the following truncated terms on water, sanitation, and hygiene: water\*, sanit\*, hygien\*, sewage\*, drought\*, lake\*, river, waste\*, drink\*, ecosystem\*, sewer\*.

138. With two members of the research team independently examining each report, this redundancy serves as a confirmation that all appropriate codes have been applied to the reports. *See, e.g.,* Jody Heymann et al., *Assessing compliance with the CRC: Indicators of Law and Policy in 191 Countries*, 22 INT'L J. CHILD. RTS. 425, 431 (2014) ("All sources were coded independently by two researchers and compared to ensure quality and consistency of coding; after databases were complete, additional quality checks were carried out.").

139. *See* Burla et al., *supra* note 132, at 116 (noting that where a coder may not understand the definition of a code or did not follow defined coding rules, "clarification meetings in the research team can foster more consistent application of coding rules by all coders involved and help avoid such misclassifications").

140. *See, e.g.,* MacQueen et al., *supra* note 136, at 35 (describing a means to ensure intercoder reliability, wherein "two or more coders are then given the task of independently coding the same sample of text. The results of their coding are then compared for consistency of text segmentation and code application. If the results are acceptable and consistent, the coding continues with periodic checks for continued intercoder agreement. If the results are unacceptable and inconsistent, the inconsistencies are reviewed by the coders and team leader(s)").

141. Applied previously in empirical human rights analysis, the Cingranelli and Richards (CIRI) Human Rights Data Project pursued a similar process of meetings with both coders and researchers to confirm proper coding of annual country reports from the US State Department and Amnesty

process has ensured a high level of consistency across the research team (with a calculated Fleiss' Kappa of 0.71 indicating a substantial level of agreement between coders<sup>142</sup>) and enhanced intercoder reliability in the study results.<sup>143</sup>

After all of the state reports were coded, the authors analyzed the coded data through the statistical calculation and graphical presentation of code occurrences, both at the report level and (controlling for report length) at the paragraph level.<sup>144</sup> As a comparative study, the authors compared the average number of codes:

- Over time and across countries;
- Relative to key normative developments in the rights to water and sanitation; and
- Before and after the CESC Reporting guidelines.

In addition to average code occurrences, the authors also calculated code co-occurrences to identify the frequency with which certain themes were discussed together.<sup>145</sup> Finally, to assess the level of thematic variation in reporting across states, the authors calculated standard deviations of average code occurrences in state reports each year.

International. David L. Cingranelli & David L. Richards, *The Cingranelli and Richards (CIRI) Human Rights Data Project*, 32 HUM. RTS. Q. 401, 409 (2010).

142. Fleiss' Kappa is an indicator commonly used to measure the degree of agreement between coders. It represents the degree of agreement between coders after correcting for agreement that would be expected to occur by chance alone. Joseph L. Fleiss, *Measuring Nominal Scale Agreement Among Many Raters*, 76 PSYCHOL. BULL. 378, 378 (1971). The strength of agreement of a kappa statistic <0.00 is poor; 0.00-0.20 is slight; 0.21-0.40 is fair; 0.41-0.60 is moderate; 0.61-0.80 is substantial; and 0.81-1.00 is almost perfect. J. Richard Landis & Gary G. Koch, *The Measurement of Observer Agreement for Categorical Data*, 33 BIOMETRICS 159, 164-65 (1977). The Fleiss' Kappa here was calculated using the online CODING ANALYSIS TOOLKIT (CAT), <http://cat.ucsur.pitt.edu>.

143. Consistency refers to how steadily each coder identifies and applies the same code to a given text, "examin[ing] the extent to which different interviewers, observers, or coders using the same instrument or measure get equivalent results." ROYCE A. SINGLETON, JR. & BRUCE C. STRAITS, *APPROACHES TO SOCIAL RESEARCH* 136 (5th ed. 2010). Applying "consistency" to the coding process, "[i]ntercoder reliability assesses the degree to which codings of text by multiple coders are similar." Daniel J. Hruschka et al., *Reliability in Coding Open-Ended Data: Lessons Learned from HIV Behavioral Research*, 16 FIELD METHODS 307, 310 (2004).

144. See *infra* notes 158-161 and accompanying text (explaining the necessity of coding at the paragraph level to control for the length of state reports).

145. Using ATLAS.ti, the authors constructed a code co-occurrence table to discern which themes tended to coincide with each other, calculating the percentage of codes that occur together. For example, if code A is applied 100 times, and code B is coded together with code A 40 times, then code B co-occurs with code A 40.0% of the time code A is applied (co-occurrence percentage = [number of times code A and code B co-occur]/code A occurrence). See SUSANNE FRIESE, *QUALITATIVE DATA ANALYSIS WITH ATLAS.TI* 175-76 (2012).

While this qualitative coding study presents novel findings, facilitating comparative research over an extended period of time and across a broad set of states, there are limitations to employing this coding methodology, presenting obstacles both in analyzing the content of state reports and in assessing the implementation of human rights.

In limiting efforts to analyze the content of state reports, biases in the dataset—in the reporting states, the study timeframe, and the CESCR process—may constrain the potential of this research to draw valid conclusions on state reporting. It has been well documented that few states are reporting on time (and some states have yet to submit even an initial report) to human rights treaty bodies,<sup>146</sup> creating a selection or participation bias due to an oversampling of compliant states.<sup>147</sup> Looking more closely at this bias across the reporting states, it is clear that there are capacity gaps among states in their processes for preparing reports, with the least developed countries more likely to be those with the least capacity to report in detail and with the least progress in implementing rights for safe drinking water and adequate sanitation.<sup>148</sup> These country biases are compounded by biases in the timeframe of this study. Successive reporting guidelines have resulted in shorter state reports, creating a temporal bias where older reports are longer and, as a consequence, may provide greater breadth of thematic detail on state water and sanitation obligations.<sup>149</sup> Further, although this study temporally subdivided state reports by seminal developments in the normative content of human rights, it might take years for states to respond to these international legal developments in their implementation efforts, creating a time lag between normative developments under international law and the reflections of those

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146. See *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 21 (noting the low number of states parties submitting reports to the Committee during the 2010-2011 biennium and highlighting the extent to which less than one-third of reports have been submitted on time).

147. See Hafner-Burton, *supra* note 1, at 268 (finding that there are “sovereignty costs” to participating in external monitoring and noting that autocracies avoid such costs by declining to submit state reports). Where this study analyzes only reporting states, additional research will be necessary to understand the decision-making process that leads specific states to ratify a human rights treaty but neglect the corresponding human rights treaty body.

148. See Alicia Ely Yamin & Kathryn L. Falb, *Counting What We Know; Knowing What to Count: Sexual and Reproductive Rights, Maternal Health, and the Millennium Development Goals*, 30 NORDIC J. HUM. RTS. 350, 355 (2012) (discussing the unreliability of maternal health data); *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 25 (recognizing capacity gaps given treaty-specific mechanisms, ad hoc preparations, weak institutional memory, and high government turnover).

149. If this occurred, it would incorrectly disprove the hypothesis, wrongfully reaching the conclusion that state reports are becoming weaker over time when in fact they have only become shorter. For a discussion of how the authors have sought to control for the reduced length of state reports, see *infra* note 161 and accompanying text.

developments in state reports.<sup>150</sup> Finally, it is not clear whether state reports to the CESCER represent the complete dataset, either because this study looks only to the CESCER rather than the Convention on the Rights of the Child (CRC) or the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (where some information on water and sanitation might be reported to other treaty bodies)<sup>151</sup> or because this study looks only at state reports rather than shadow reports, constructive dialogue, or concluding observations (where information might be reported in response to civil society advocacy or previous Committee observations).<sup>152</sup>

In limiting this study in assessing implementation of human rights to water and sanitation, there are additional methodological concerns that state reports to international treaty bodies do not reflect the actual implementation of human rights at the domestic level. Where such reports only measure the ways in which states “talk the talk,” any analysis of such reporting cannot assess the ways in which states “walk the walk,” implementing rights in national practice.<sup>153</sup> Compounded by domestic political considerations in state self-reporting, there are few independent bases to confirm the accuracy with which states report on human rights implementation,<sup>154</sup> with states often seen to submit favorable data without

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150. See Stephen C. McCaffrey, *The Human Right to Water*, in FRESH WATER AND INTERNATIONAL ECONOMIC LAW 93, 94 (Edith Brown Weiss et al. eds., 2005) (noting, in the context of General Comment 15, that “State practice occurs more through accretion than avulsion. Thus it may take some time for countries to react, one way or the other”).

151. See *infra* note 189 and accompanying text (discussing the lack of disaggregated water data on the basis of gender, race, and age and considering how this data might have been submitted to other human rights treaty bodies). To confirm that this research has not neglected to account for information submitted to other human rights treaty bodies, this study first confirmed “that the Committee is the human rights treaty body to which states report the vast majority of their implementation efforts on water and sanitation.” See *supra* note 126 and accompanying text.

152. O’Flaherty, *supra* note 11, at 39–41 (noting the lack of correlation between state reports, constructive dialogue, and concluding observations and recognizing the difficulty of analyzing measures taken by states in response to prior concluding observations). To assess the influence of concluding observations on state reports, the authors are carrying out a follow-up study on the right to health that codes consecutive state reports and the mediating CESCER concluding observation; to assess the influence of shadow reports on concluding observations, the authors are carrying out a follow-up study on reproductive rights that codes shadow reports from the Center for Reproductive Rights and concluding observations from five human rights treaty bodies.

153. See generally Emilie M. Hafner-Burton & Kiyoteru Tsatsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOC. 1373 (2005). Where it is unclear whether all state reporting serves as a public relations front (without any consequences for national governance or rights implementation), additional research will be necessary to examine the links between state reporting and government practice.

154. See TODD LANDMAN & EDZIA CARVALHO, MEASURING HUMAN RIGHTS 108–09 (2010) (noting that official government statistics were not designed to assess human rights realization).

critical reflection.<sup>155</sup> Finally, as state reports often share only national-level measures of government water and sanitation efforts, these countrywide trends do not fully capture either the range of rights violations committed by non-state actors<sup>156</sup> or the lived experiences of impacted individuals (or, where data is not disaggregated, entire groups or regions), thereby limiting an examination of the realization of human rights.<sup>157</sup>

Notwithstanding these limitations, this study of human rights reporting on water and sanitation provides generalizable findings on treaty monitoring as a basis of human rights accountability, facilitates analysis of the impacts of human rights institutions on state practice, and generates more specific hypotheses for future studies on human rights implementation. This novel empirical approach demonstrates the potential of rights-based advancements to affect human rights implementation, with these results on the evolving content of state reports framing the development of universal human rights indicators that would facilitate human rights accountability through effective and efficient human rights reporting.

#### IV. EVOLUTION OF WATER & SANITATION IN STATE REPORTING

The depth of human rights reporting on water and sanitation has evolved dramatically, and these changes in the thematic content of state party reports to the CESCR chronicle government efforts to implement human rights treaty obligations. Coding state human rights reports provides a quantitative representation of the qualitative information reported to the Committee.<sup>158</sup> Through analytic coding of the 170 human rights reports described above, it becomes possible to identify systematically the trends,

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155. See Connors, *supra* note 63 and accompanying text.

156. See Sharmila Murthy, *The Human Right(s) to Water and Sanitation: History, Meaning and the Controversy Over Privatization*, 31 BERKELEY J. INT'L L. 89, 118–20 (2013) (noting that because reports focus on the state—as it is the state that has ratified the ICESCR and bears a reporting obligation to the Committee—these reports neglect the private sector actors that may be responsible for violating rights to water and sanitation).

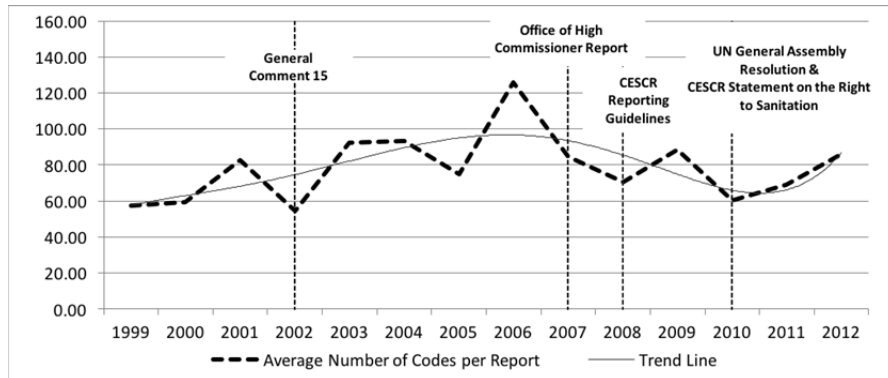
157. See generally Sally E. Merry, *Measuring the World: Indicators, Human Rights, and Global Governance*, 52 CURRENT ANTHROPOLOGY 83 (2011). Given this limitation, it is clear that state reporting is an inherently crude tool for measuring human rights realization across nations and cannot fully replace detailed qualitative human rights narratives within nations.

158. See GUEST ET AL., *supra* note 131, at 133–34 (concluding that quantifying qualitative data through code frequencies can allow researchers “to highlight patterns in the data that may be difficult to discern otherwise”).

patterns, and interrelationships across indicators of the human rights to water and sanitation.<sup>159</sup>

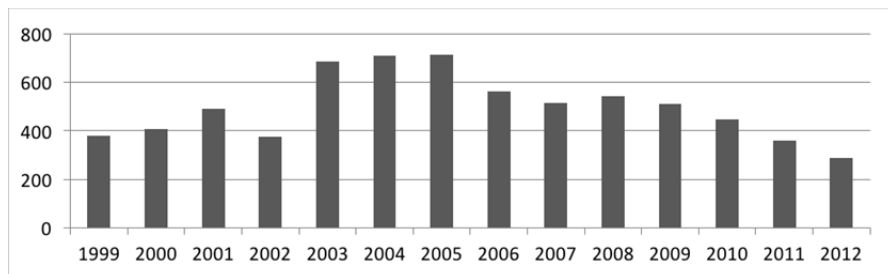
This analysis begins by assessing the number of indicators per state report in each year of the study, providing the complete set of water and sanitation codes that will be later subdivided to assess correlations across the fourteen-year dataset of state reports to the CESCR.

### Average Number of Water and Sanitation Codes per State Report



However, because of wide variations in the length of state reports, examining these reports as a single unit provides an incomplete picture of the depth of state party reporting on water and sanitation within reports.

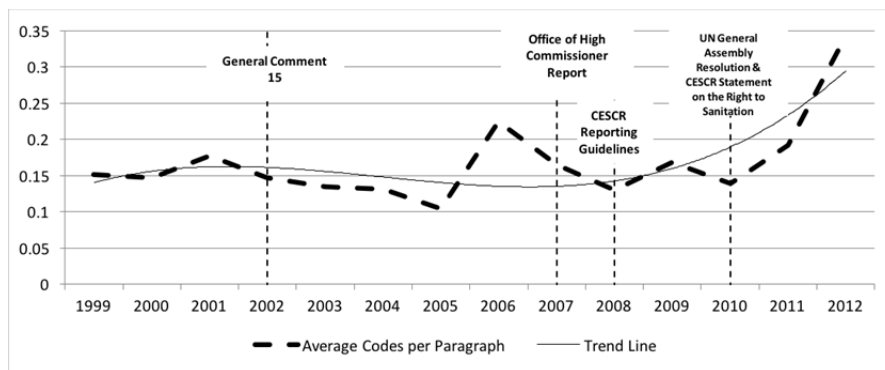
### Average Number of Paragraphs per State Report



159. While this article analyzes select correlations between human rights advancements and the thematic content of state reports, the full dataset of codes for this project can be found at *Meier & Kim – Water & Sanitation Codes*, BENJAMIN MASON MEIER, <https://bmeier.web.unc.edu/meier-kim-water-sanitation-codes/> (last visited Oct. 26, 2015), and the authors encourage other researchers to identify additional correlations across water and sanitation indicators that may have been overlooked in the present analysis.

The length of state party reports to the CESCR has varied dramatically over time, reflecting in part the changes in reporting practices that followed the 2006 Harmonized Reporting Guidelines,<sup>160</sup> and simply examining indicators at the report level does not fully reflect the relative prioritization of the rights to water and sanitation in state reporting.<sup>161</sup> For example, a decline in water and sanitation reporting might lead to the erroneous conclusion that states have placed less emphasis on water and sanitation rights when the decline in attention may have been due merely to an overall decrease in the length of reports. By adjusting for the average number of paragraphs in state reports, this study's focus on the average number of codes *per paragraph* seeks to analyze the depth of state reporting on the rights to water and sanitation while controlling for variations in the overall length of state reports to the Committee.

### Average Number of Water and Sanitation Codes per Paragraph



By analyzing the evolving thematic content of references to water and sanitation—at both the report and paragraph levels—this part examines state party reports to the CESCR to investigate how they reflect (a) changes in state implementation of human rights, (b) developments in international human rights norms, and (c) specificity in treaty body reporting guidelines.

160. See *supra* notes 59–68 and accompanying text.

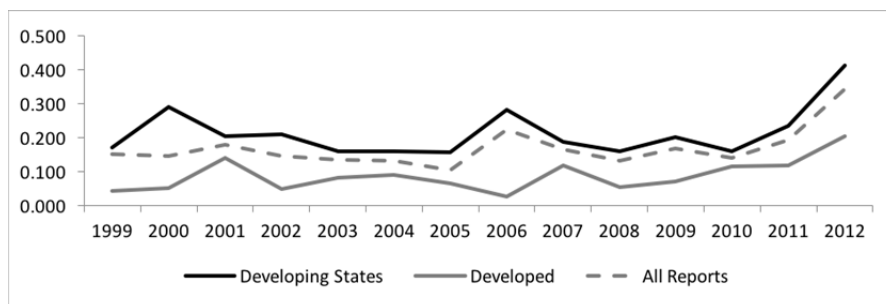
161. See JULIET VANEENWYK, WASH. STATE DEP'T OF HEALTH, GUIDELINES FOR USING AND DEVELOPING RATES FOR PUBLIC HEALTH ASSESSMENT 2 (2012), <http://www.doh.wa.gov/Portals/1/Documents/5500/Rateguide.pdf> (noting the need to calculate rates “[t]o account for growth in a community or to compare communities of different sizes, we usually develop rates to provide the number of events per population unit”). Applying the same logic to this study, water and sanitation reporting is being compared across reports of differing lengths (measured by number of paragraphs), and the authors have calculated the rate of codes per paragraph to account for differences in report length.



### A. Changes in Human Rights Implementation

The implementation of economic, social, and cultural rights has become a priority for an increasing number of states in recent decades,<sup>162</sup> and states have come to prioritize safe drinking water and adequate sanitation in reporting on their implementation efforts to the Committee.<sup>163</sup> However, state reports have been inconsistent in the content of their reporting on water and sanitation, with developing states addressing water and sanitation obligations far more extensively than developed states.<sup>164</sup>

#### Developing vs. Developed States: Average Water and Sanitation Codes per Paragraph



*Note:* While not reported here, the authors have confirmed that the same trends in this subpart hold when plotting Average Water and Sanitation Codes per Report.

Whereas many developing states have discussed water and sanitation comprehensively, created separate reporting sections on water and sanitation, and addressed challenges to national implementation,<sup>165</sup> many

162. Courtney Jung & Evan Rosevear, *Economic and Social Rights Across Time, Regions, and Legal Traditions: A Preliminary Analysis of the TIESR Dataset*, 30 NORDIC J. HUM. RTS. 372, 373–75 (2012).

163. DE ALBUQUERQUE & ROAF, *supra* note 134, at 199; *see also* CATARINA DE ALBUQUERQUE, *Monitoring Compliance with the Human Rights to Water and Sanitation*, in WATER AND SANITATION HANDBOOK, *supra* note 91, at 32 (noting an increasing focus on water and sanitation in the CESCR’s constructive dialogue with states).

164. The economic delineation of states as developed or developing is based upon UN categorizations in its reporting on the “world economic situation.” U.N. DEP’T OF ECON. & SOC. AFFAIRS ET AL., WORLD ECONOMIC SITUATION AND PROSPECTS 131–32, U.N. Sales No. E.12.II.C.2 (2012). Because this analysis includes only states officially categorized by the UN as developed or developing (N=164), it excludes the following states: China, Macau, Democratic People’s Republic of Korea, Liechtenstein, Monaco, and San Marino.

165. *E.g.*, U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic, Social and Cultural Rights, Second, Third and Fourth Reports: Afghanistan*, ¶¶ 112–119, U.N. Doc. E/C.12/AFG/2-4 (July 9, 2009) (outlining availability and accessibility data, disaggregated by province and type of facility); U.N. Econ. & Soc. Council, Comm.

developed states have rarely discussed water or sanitation.<sup>166</sup> When they have, these developed states have reported scant details about how they are progressively realizing these rights, often stating dismissively (and erroneously) that the entire population has complete access to water and sanitation.<sup>167</sup> Focused on the information that states have reported on their implementation efforts, these efforts are typically framed in state reports (1) around a “structure-process-outcome” typology and (2) through cross-cutting rights-based principles. Given such inconsistencies across states in reporting on human rights implementation, these results highlight the need for uniformity in the ways that states parties consider safe drinking water and adequate sanitation as part of their implementation obligations.

### 1. Structure-Process-Outcome Typology

The types of information reflective of the implementation of human rights are categorized by a specific “structure-process-outcome” typology. Illustrative of causal pathways, this framework for “commitment-effort-result” assesses the links between policy cause and social effect, examining the processes by which rights are realized and correlating outcome measures with changes in structure and process.<sup>168</sup> Arising out of early efforts to monitor the right to health,<sup>169</sup> this framework for evaluating

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on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic, Social and Cultural Rights, Third, Fourth and Fifth Reports: El Salvador*, ¶¶ 297–319, U.N. Doc. E/C.12/SLV/3-5 (Oct. 30, 2012) (developing a “Right to Water” section to review structures and processes that seek to realize access to drinking water).

166. Taken to the extreme, there are a large number of developed states that report no information on efforts to implement water and sanitation rights. E.g., Germany (2000), Sweden (2000), Netherlands (Antilles) (2006), Australia (2007), Denmark (2010), Iceland (2010), Iceland (2011), Monaco (2011), and Italy (2012).

167. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic, Social and Cultural Rights, Fifth Rep.: Finland*, ¶ 528, U.N. Doc. E/C.12/FIN/5 (Feb. 8, 2006) (“The whole population has access to excreta disposal facilities . . . .”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic and Social Cultural Rights, Fifth Rep.: Germany*, ¶ 269, U.N. Doc. E/C.12/DEU/5 (July 27, 2010) (“In the Federal Republic of Germany, the population’s drinking water requirements are met in full by the central water supply systems managed by the water services or through individual supply (private wells). . . . The access of the population of the Federal Republic of Germany to clean drinking water is thus guaranteed throughout the whole of the country.”).

168. AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT’L L. 253, 295–97 (2009).

169. See generally Paul Hunt, U.N. Econ. & Soc. Council, *Rep. of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. E/CN.4/2006/48 (Mar. 3, 2006) (setting out a methodology for a human rights-based approach to health indicators and recommending actions to operationalize the methodology).

implementation has come to be applied as a basis for monitoring compliance with all human rights by all human rights treaty bodies.<sup>170</sup>

- **Structure** – The UN has noted that “[s]tructural indicators reflect the ratification/adoption of legal instruments and existence of basic institutional mechanisms deemed necessary for facilitating realization of the human right concerned.”<sup>171</sup> Encapsulating the law “on the books,” changes in structure reflect the codification of international rights in the national constitution and in domestic legislation.<sup>172</sup>
- **Process** – Process indicators “capture the cause element of a cause and effect relationship between the efforts of States and the fulfillment of the right under examination.”<sup>173</sup> The examination of processes recognizes the importance of government conduct to realize rights<sup>174</sup> and includes the policies, strategies, programs, interventions, budgets, and activities developed to implement state obligations.<sup>175</sup>
- **Outcome** – Outcome indicators measure the results of state efforts, capturing the “attainments, individual and collective, that reflect the status of realization of human rights in a given context.”<sup>176</sup> With outcome measures often drawn from socio-economic statistics (e.g., mortality rates), they provide information on the actual enjoyment of rights but often lag in time behind structure and process indicators.

170. Office of the High Comm’r for Human Rights, *Rep. on Indicators for Monitoring Compliance with International Human Rights Instruments*, ¶¶ 13, 17–19, U.N. Doc. HRI/MC/2006/7 (May 11, 2006) [hereinafter *OHCHR 2006 Rep. on Indicators*].

171. *Id.* ¶ 17.

172. See generally HENRI SMETS, EUR. COUNCIL ON ENVTL. LAW, *THE RIGHT TO WATER IN NATIONAL LEGISLATIONS* 29–30 (2006) (reviewing national efforts to implement the right to water through domestic law); CATARINA DE ALBUQUERQUE, *Legislative, Regulatory and Policy Frameworks, in WATER AND SANITATION HANDBOOK*, *supra* note 91, at 7–12 (recognizing the importance of translating “international legal norms into the national legal system”).

173. Rosga & Satterthwaite, *supra* note 168, at 296 (citing *OHCHR 2008 Rep. on Indicators*, *supra* note 133, ¶ 19) (emphasis omitted).

174. See U.N. Econ. & Soc. Council, *Rep. of the High Commissioner for Human Rights on Implementation of Econ., Soc. & Cultural Rights*, ¶ 34, U.N. Doc. E/2009/90 (2009) [hereinafter *Rep. on Implementation of Econ., Soc. & Cultural Rights*] (“The adoption of legislation, regulations, policies, plans and programmes does not amount automatically to the realization of economic, social and cultural rights. Realization requires action to translate the specific commitments included in legislation and other normative instruments into reality.”).

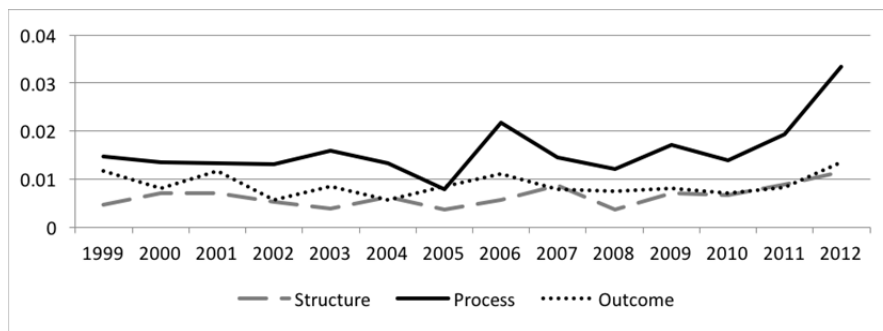
175. See Gauthier de Beco, *Human Rights Indicators for Assessing State Compliance with International Human Rights*, 77 NORDIC J. INT’L L. 23, 43 (2008) (noting that “process indicators measure *de facto* compliance with human rights treaties”).

176. *OHCHR 2008 Rep. on Indicators*, *supra* note 133, ¶ 21.

The UN adopted this tripartite typology to focus states on incremental implementation efforts that could be taken to progressively realize rights and could be assessed by human rights treaty bodies.<sup>177</sup> Because water and sanitation rights depend on legal reforms and resource allocations, a focus on outcome alone provides insufficient information about state implementation of human rights obligations, creating an imperative to focus separately on structure and process.

In framing state reports under this structure-process-outcome typology, state reporting has expanded over time beyond water and sanitation outcomes, with states increasingly reporting on changing structures and, to a greater extent, processes to implement water and sanitation obligations.

### Structure, Process, and Outcome: Average Codes per Paragraph



While reporting on water and sanitation outcomes holds relatively steady, increases in reporting on structure and process have more than doubled in the average number of codes per paragraph, from 0.005 to 0.011 (structure) and from 0.015 to 0.033 (process).<sup>178</sup> Economic and social rights have been incorporated in an increasing number of national constitutions,<sup>179</sup> and in reporting on these structural changes to the Committee, states parties have discussed both existing constitutional guarantees that have been interpreted

177. Interview with Paul Hunt, Former U.N. Special Rapporteur on the Human Right to the Highest Attainable Standard of Health, United Nations, in Geneva, Switzerland (May 23, 2013); *see also supra* note 71 and accompanying text (discussing the principle of progressive realization in the context of economic, social, and cultural rights).

178. With the Committee intending that state reports focus on “new developments” since the previous report, *see supra* notes 78–83 and accompanying text, one would have expected structure and process reporting to decrease over time, as these types of reforms are unlikely to occur repeatedly.

179. *See Jung & Rosevear, supra* note 162, at 377 (“Now . . . many constitutional texts identify [economic and social rights] as justiciable, according them equal status . . . with civil and political rights.”).

to address water and sanitation<sup>180</sup> and new constitutional reforms to codify these expanding rights.<sup>181</sup> Further, building from an early focus on obligations of conduct,<sup>182</sup> states parties have expanded reporting on processes to implement human rights obligations, highlighting the development of new ministries, budgets, and programs specific to safe drinking water and adequate sanitation.<sup>183</sup>

The UN's effort to focus states on structural and process indicators is having its intended effect, leading to increased reporting on the information necessary for the Committee to assess these indicators of human rights implementation. However, these results raise concerns that in focusing reporting on structure and process, states have not linked these commitments and efforts to the ensuing results, neglecting consistent

180. See, e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Brazil*, ¶ 85, U.N. Doc. E/1990/5/Add.53 (Nov. 20, 2001) (“[T]he Constitution guarantees the right to receive the minimum monthly wage needed to cover the basic and vital needs of the family (housing, food, education, health, leisure, clothing, hygiene, transportation and social security.”).

181. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Kenya*, ¶ 120, U.N. Doc. E/C.12/KEN/1 (Sept. 11, 2007) (“Kenya is in the process of constitutional review . . . The draft constitution recognized the right of every person to accessible and adequate housing, the right to be free from hunger and to adequate food of acceptable quality and every person's right to water in adequate quantities and quality as well as every person's right to reasonable standard of sanitation.”); see also DE ALBUQUERQUE, *supra* note 172, at 11–12 (discussing and distinguishing explicit and implicit constitutional guarantees of the rights to water and sanitation).

182. Prior to the structure-process-outcome typology, state obligations were subdivided into either obligations of conduct or obligations of result. CRAVEN, *supra* note 123, at 108. See, e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Right, Second Rep. (Addendum): Georgia*, ¶ 197, U.N. Doc. E/1990/6/Add.31 (Aug. 10, 2001) (“Given the substandard quality (from the sanitary engineering point of view) of existing treatment plants and sewerage, the overall standard of service and treatment is quite low. Accordingly, there is a real risk of disease spreading.”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second Rep. (Addendum): Trinidad and Tobago*, ¶ 260, U.N. Doc. E/1990/6/Add.30 (Oct. 2, 2000) (“Measures undertaken to improve environmental and industrial hygiene have involved . . . [T]he implementation of a quality surveillance programme that monitors the quality of potable and industrial water, so as to control the presence of pollutants.”).

183. See, e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third Rep.: New Zealand*, ¶ 485, U.N. Doc. E/C.12/NZL/3 (Jan. 17, 2011) (“The national Waste Strategy includes a target to upgrade, close or replace all substandard waste water treatment plants by 2020. In 2003 the Ministry of Health launched a ten-year sewerage subsidy programme to help communities of fewer than 10,000 people upgrade their waste water treatment facilities.”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third and Fourth Rep.: Uruguay*, ¶ 205, U.N. Doc. E/C.12/URY/3-4 (July 22, 2009) (“Work is currently under way on the sixth pumping line, which will be inaugurated in late 2009 and will ensure the supply of water to the Montevideo metropolitan area, where 44.7 per cent of Uruguay's population (1,450,000 people) live, up to the year 2035.”).

outcome indicators that are essential to determining the cause-and-effect dynamics of rights realization.<sup>184</sup> Although reporting on outcomes is often drawn from standard socio-economic measures, the lack of consistent outcome measures in state reports has limited the Committee in monitoring the progressive realization of water and sanitation rights through comparable information over time.

## 2. Rights-Based Principles

The UN has described the “rights-based approach” to public policy as a means to address fundamental human rights principles for, *inter alia*, non-discrimination and equality, participation, accountability, and sustainability.<sup>185</sup> These crosscutting human rights principles provide safeguards that are crucial to realizing all human rights.<sup>186</sup> Because these principles pose immediately binding (and often cost-neutral) obligations for the human rights to water and sanitation, they are not dependent on national resources or progressive realization, and the Committee has expected state parties to safeguard these principles completely.<sup>187</sup>

Yet states have largely refrained from any discussion of these rights-based principles in their CESC Reporting on water and sanitation, with a small absolute number of indicators (zero or close to zero codes on any particular human rights principle) compounded by a small upward trend in code occurrences (with slopes varying from 0.001 to 0.004).

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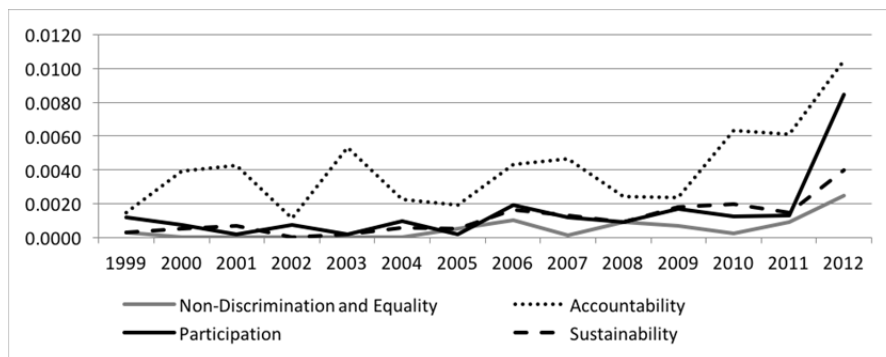
184. See Office of the High Comm’r for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation*, U.N. Doc. HR/PUB/12/5, at 2 (2012) [hereinafter *Guide to Measurement*] (“There is a recognition that one has to move away from using general statistics and instead progress towards identifying specific indicators for use in human rights. The general statistics are often indirect and lack clarity in their application, whereas specific indicators are embedded in the relevant human rights normative framework and can be more readily applied and interpreted by their potential users.”).

185. DE ALBUQUERQUE & ROAF, *supra* note 134, at 32–34.

186. See Gillian MacNaughton & Paul Hunt, *A Human Rights-Based Approach to Social Impact Assessment*, in *NEW DIRECTIONS IN SOCIAL IMPACT ASSESSMENT: CONCEPTUAL AND METHODOLOGICAL* 355, 363–65 (Frank Vanclay & Ana Maria Esteves, eds. 2011) (describing the principles of human rights impact assessment as a means to incorporate the core values of human rights in public policy).

187. See DE ALBUQUERQUE & ROAF, *supra* note 134, at 33 (discussing the importance of non-discrimination in providing water and sanitation services); DE ALBUQUERQUE, *supra* note 91, at 26 (“The obligation to respect, protect, and fulfil human rights in a participatory, accountable and non-discriminatory way is a duty that is immediately binding.” (footnote omitted)).

### Human Rights Principles: Average Codes per Paragraph



With distinct reasons for the neglect of each human rights principle, it becomes clear that the focus of the UN system on these crosscutting principles is not at all reflected in the content of state party reports to the Committee:

- **Non-discrimination and equality** – Although General Comment 15 specifically extended to water the ICESCR’s prohibition on “discrimination on the grounds of race, colour, sex, age, language, religion, political or . . . health status,”<sup>188</sup> few states parties examine discrimination or inequality in their water and sanitation reporting to the CESCR.<sup>189</sup> Whereas states sometimes examine inequalities on the basis of geography—either between rural or urban populations (reflecting data compiled by the WHO/UNICEF Joint Monitoring Programme (JMP) and requested by the CESCR reporting guidelines) or geographic regions (often mentioning specific villages, towns, cities, or regions)<sup>190</sup>—further data disaggregation is often not undertaken:

188. *General Comment 15*, *supra* note 97, ¶ 13. Derived from articles 1 and 2 of the Universal Declaration of Human Rights, equality and non-discrimination are widely considered to be “bedrock principles of human rights law.” DE ALBUQUERQUE, *supra* note 91, at 29.

189. While there are few references to inequality in water and sanitation reporting to the Committee, it is possible (although outside the scope of this research) that such disaggregated information might have been submitted to other human rights treaty bodies (e.g., CEDAW, CRC, CERD).

190. See WORLD HEALTH ORG. & UNICEF, MEETING THE MDG DRINKING WATER AND SANITATION TARGET: THE URBAN AND RURAL CHALLENGE OF THE DECADE 6–25 (2006), [http://www.wssinfo.org/fileadmin/user\\_upload/resources/1198239354-JMP\\_06.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/1198239354-JMP_06.pdf) (noting urban/rural disparities in access to water and sanitation and arguing for rural/urban data disaggregation).

Specific “Population Addressed” Codes as a Proportion of All “Population Addressed” Codes (%)

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Urban	26	19	27	27	22	14	26	23	26	22	20	20	14	22
Rural	35	22	29	35	30	28	25	25	29	28	28	32	23	26
Geographic Region	14	26	21	0	18	14	20	14	17	20	20	17	10	17
All other Populations	26	33	24	38	30	44	29	38	27	30	32	31	52	35

Note: “All other populations” includes the following codes: women, children, racial and ethnic minorities, migrants, refugees, people with disabilities, older persons, prisoners, and other vulnerable populations.

Despite Committee recognition that data disaggregation is necessary to address marginalized and vulnerable populations,<sup>191</sup> states parties report little information about the specific populations affected by a lack of safe drinking water and adequate sanitation.<sup>192</sup> Considering the number of possible populations in the “population addressed” coding category, this striking neglect of such populations in state reporting highlights a lack of disaggregated water and sanitation data, thwarting assessments of both *de jure* and *de facto* discrimination and limiting the Committee’s ability to recommend affirmative measures to reduce inequality.<sup>193</sup>

- **Participation** – Participation allows for systems and services that more effectively address local needs, facilitating a rights-based approach to water and sanitation where community members are able to engage with governmental and non-governmental providers

191. See, e.g., Rachel Johnstone, *Feminist Influences on the United Nations Human Rights Treaty Bodies*, 28 HUM. RTS. Q. 148, 160–64 (2006) (noting the Committee’s incorporation of gender perspectives and attention to disaggregating data by gender); see also Langford & King, *supra* note 77, at 489–92 (arguing that discrimination is particularly relevant to violations of economic, social, and cultural rights).

192. But see U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second Rep.: Slovakia*, ¶ 266, U.N. Doc. E/C.12/SVK/2 (Jan. 14, 2011) (“The Roma-related problems, however, extend beyond the limits of health care, as they are rather of a social than medical nature, and require long-term solutions. They result mainly from diseases caused by poor hygiene, an irresponsible approach by parents to prenatal health care and health care in general, a low vaccination rate, etc.”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Zambia*, ¶ 51, U.N. Doc. E/1990/5/Add.60 (Sept. 1, 2003) (“In March 2000 the State party adopted the National Gender Policy, which addresses the following gender issues and concerns: . . . [l]ack of access by women and girls to adequate food, safe water and sanitation.”).

193. See U. N. Secretary-General, *Integrating Non-Discrimination and Equality into the Post-2015 Development Agenda for Water, Sanitation and Hygiene*, ¶ 16, U.N. Doc A/67/270 (Aug. 8, 2012) (“While the specific groups may vary, patterns of marginalization, exclusion and discrimination are consistent across the world. Showing these patterns and trends across the world through global monitoring conveys a very powerful message and provides a tool to draw attention to the situation of the most disadvantaged and marginalized, helping to target efforts towards them.”).



in: setting the agenda, identifying policy goals, implementing programs, and monitoring program effectiveness.<sup>194</sup> Despite increasing human rights focus on full, free, and meaningful participation in the water and sanitation sectors,<sup>195</sup> state party discussion of participation is extremely limited in the context of water and sanitation reporting, remaining below an average of 0.002 codes per paragraph before spiking in 2012 at 0.008 codes per paragraph.<sup>196</sup> Where policies and practices must be in place to enable participation, overcoming structural barriers that exclude marginalized groups,<sup>197</sup> the specific mechanisms of community participation in the water and sanitation sectors must be context specific, dependent upon decision-making power within communities, and reported in state human rights reporting.<sup>198</sup>

- **Accountability** – To ensure accountability for implementing human rights to water and sanitation, it is necessary for states to develop: domestic monitoring systems to collect accurate data, independent reviews to provide institutional oversight, and

194. See generally HELEN POTTS, HUMAN RIGHTS CENTRE, UNIVERSITY OF ESSEX, PARTICIPATION AND THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH (2009), [http://www.law.lu.se/WEBUK.nsf/\(MenuItemById\)/JAMR31material/\\$FILE/Helen%20Potts%20on%20Participation-1.pdf](http://www.law.lu.se/WEBUK.nsf/(MenuItemById)/JAMR31material/$FILE/Helen%20Potts%20on%20Participation-1.pdf) (discussing participation as an indicator of the right to health and an independent right, an end unto itself). In applying this focus on participation to the human right to water, see Richard P. Hiskes, *Missing the Green: Golf Course Ecology, Environmental Justice, and Local "Fulfillment" of the Human Right to Water*, 32 HUM. RTS. Q. 326, 339 (2010) ("It is in the third obligation of fulfilling the right to water [participation] where the concentric ripples of responsibility flow outward from national governments into the domain of local policymaking.").

195. See DE ALBUQUERQUE & ROAF, *supra* note 134, at 31 ("Participation and access to information have long been key aspects of good development practice, helping to ensure acceptability, affordability and sustainability of water and sanitation services."). To clarify these issues further, the Special Rapporteur reported on the issue of participation in the realization of the human rights to water and sanitation in her final report to the UN General Assembly. See generally Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, U.N. Doc. A/69/213 (July 31, 2011) (by Catarina de Albuquerque).

196. Compounding the harm of this lack of focus on community participation, there also appears to be scant attention to indicators of community "acceptability" in reporting on water and sanitation programs. See *infra* notes 237–37 and accompanying text (discussing findings on acceptability).

197. See, e.g., Benjamin Mason Meier et al., *Implementing Community Participation Through Legislative Reform: A Study of the Policy Framework for Community Participation in the Western Cape Province of South Africa*, 12 BMC INT'L HEALTH & HUM. RTS. 1, 12 (2012) (concluding that "it is crucial that policies address the institutions by which participation is established, formalized, and maintained within the health system").

198. See DE ALBUQUERQUE, *Principles*, in WATER AND SANITATION HANDBOOK, *supra* note 91, at 57–65 (discussing the elements of "active, free and meaningful participation" and the "[d]ifficulties in ensuring participation").

enforcement mechanisms to ensure corrective action.<sup>199</sup> With accountability consistently found to be the most frequently reported principle of the rights-based approach to water and sanitation (albeit miniscule when compared with other coding categories), states have discussed accountability through a focus on judicial review,<sup>200</sup> system oversight,<sup>201</sup> and local monitoring.<sup>202</sup> These national accountability mechanisms provide information transparency and public scrutiny, facilitating legal remedies for

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199. See DE ALBUQUERQUE & ROAF, *supra* note 134, at 177–78 (discussing forms that accountability can take in the field of access to water and sanitation).

200. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial, Second and Third Reports: Ethiopia*, ¶ 244, U.N. Doc. E/C.12/ETH/1-3 (Mar. 28, 2011) (“Complaints of violations of rights of water use by users of water for economic benefit may be presented to the Ministry of Waters Resources pursuant to Proclamation No. 197/2000. Those who are not satisfied with the decision of the Ministry may appeal to ordinary courts within 60 days. If dispute arises among National Regional States, the River Basin High Council is empowered to decide on such matters . . .”). Building on Committee requests for information on jurisprudence, General Comment 15 encourages “[j]udges, adjudicators and members of the legal profession . . . to pay greater attention to violations” of Covenant rights. *General Comment 15*, *supra* note 97, ¶ 58. For an examination of the dramatic evolution of judicial accountability for water and sanitation rights, compare Michael J. Dennis & David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 AM. J. INT’L L. 462, 464 (2004) (discussing early difficulties inherent in litigating water and sanitation rights) with DE ALBUQUERQUE, *Access to Justice for Violations of the Human Rights to Water and Sanitation*, in WATER AND SANITATION HANDBOOK, *supra* note 91, at 40–53 (providing a detailed framework on overcoming barriers to access to justice). See also Ana Paula de Barcellos, *Sanitation Rights, Public Law Litigation, and Inequality: A Case Study from Brazil*, 16 HEALTH & HUM. RTS. J. (2014) (discussing the growth and limitations of litigation to address sewage collection and treatment).

201. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic, Social and Cultural Rights, Fourth, Fifth and Sixth Reports: Belarus*, ¶ 345–46, U.N. Doc. E/C.12/BLR/4-6 (Oct. 29, 2012) (“Under the national conformity certification system, drinking water provided through the drinking water supply systems must be appropriately certified . . . [T]he quality control system for public water supplies provides for laboratory testing by the competent authorities of the Ministry of Housing and Public Services in the framework of conformity inspections. The Ministry of Health, carrying out the State’s oversight functions, monitors drinking water using chemical and microbiological factors.”).

202. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Brazil*, ¶ 699, U.N. Doc. E/1990/5/Add.53 (Nov. 20, 2001) (discussing the “Acute Diarrhoeal Diseases Monitoring Programme,” which detects and investigates water-borne disease “through environmental surveillance and checking the quality of the water intended for human consumption”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Czech Republic*, ¶ 543, U.N. Doc. E/1990/5/Add.47 (May 25, 2001) (“In 30 selected cities, the following are regularly evaluated . . . health consequences of and risks of polluted air [and] polluted drinking water . . . Results of the monitoring are published annually, both in a summary report and in detailed specialized reports.”).

violations in the water and sanitation sectors.<sup>203</sup> Supporting this domestic accountability through international scrutiny, the first UN Special Rapporteur has used her country missions to highlight gaps in national governance, serving as an external accountability mechanism in select states and focusing on accountability mechanisms as central to human rights implementation.<sup>204</sup>

- **Sustainability** – Since the early 1990s, sustainability has come to be seen as a key indicator of the rights-based approach to development,<sup>205</sup> ensuring that the progressive realization of economic, social, and cultural rights is not set back by retrogressive measures, financial mismanagement, or infrastructure neglect.<sup>206</sup> Sustainability considerations are necessary to guarantee that states use the maximum available resources to maintain water sources and sanitation systems on a continuous and predictable basis.<sup>207</sup> As seen in state reports, governments have begun to focus

203. See DE ALBUQUERQUE, *supra* note 200, at 25–30 (discussing national mechanisms for access to justice through service providers, administrative and regulatory procedures, national human rights institutions, and courts).

204. See DE ALBUQUERQUE & ROAF, *supra* note 134, at 180 (“The Special Rapporteur has encountered similar gaps in water quality first-hand during country missions in both the developed and developing world.”); see, e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second, Third and Fourth Reports: Egypt*, ¶ 219, U.N. Doc. E/C.12/EGY/2-4 (Dec. 11, 2011) (“[I]n June 2009, Egypt received the United Nations independent expert on the issue of human rights obligations related to safe drinking water and sanitation. Her conclusions and recommendations recognized the level of Egypt’s political commitment to providing its citizens with drinking water and sanitation services, the significant achievements to date, and the Government’s determination to pursue its efforts to meet the challenges confronting it at many levels.”).

205. See Brigitte I. Hamm, *A Human Rights Approach to Development*, 23 HUM. RTS. Q. 1005, 1007 (2001) (“A series of UN world conferences in the first half of the 1990s has helped to create the understanding that democracy, human rights, sustainability, and social development are interdependent.”).

206. See VIRGINIA ROAF ET AL., MONITORING IMPLEMENTATION OF THE RIGHT TO WATER: A FRAMEWORK FOR DEVELOPING INDICATORS 17 (2005), [http://www.worldwatercouncil.org/fileadmin/www/Programs/Right\\_to\\_Water/Pdf\\_doct/Monitoring\\_implementation\\_of\\_the\\_RTW\\_Indicators.pdf](http://www.worldwatercouncil.org/fileadmin/www/Programs/Right_to_Water/Pdf_doct/Monitoring_implementation_of_the_RTW_Indicators.pdf) (“According to the Committee on Economic, Social and Cultural Rights, there is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.”).

207. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, *Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, ¶ 16, U.N. Doc. A/HRC/24/44 (July 11, 2013) [hereinafter *Rep. on the Right to Safe Drinking Water*] (“Where States fail to ensure adequate operation and maintenance, where they fail to implement adequate mechanisms for regulation, monitoring and sector oversight, or where they fail to build and strengthen their capacity in the long term, the result may be unsustainable interventions that lead to slippages in access to water and sanitation and retrogression in the realization of the human rights to water and sanitation.”); see also WATERAID, SUSTAINABILITY FRAMEWORK 5 (2011), <http://www.wateraid.org/~media/Publications/sustainability-framework.pdf> (“Once change for the better has been brought about, that trajectory of change must be maintained and enhanced. If communities slip

on resource conservation and infrastructure maintenance, addressing sustainable financing for water and sanitation facilities and services.<sup>208</sup> With the CESCER recognizing an imperative for states parties to address sustainability even in times of economic crisis,<sup>209</sup> the UN Special Rapporteur has recommended that states pursue holistic financial planning for the operation and maintenance of water and sanitation systems<sup>210</sup> and has sought to include a water and sanitation goal as part of the post-2015 Sustainable Development Goals.<sup>211</sup>

Belying the importance of these cross-cutting human rights principles, the rights-based approach to water and sanitation is largely neglected in state reporting on the human rights to water and sanitation, and there has been little variation over time in the limited information that is reported to the Committee. Without consistent data that reflect these human rights

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back into a situation where they have to rely on unimproved water and sanitation services then investment has effectively been wasted.”); *see generally* WORLD HEALTH ORG. & UN-WATER, GLAAS 2012 REPORT: UN-WATER GLOBAL ANALYSIS AND ASSESSMENT OF SANITATION AND DRINKING-WATER - THE CHALLENGE OF EXTENDING AND SUSTAINING SERVICES (2012), [http://www.un.org/waterforlifedecade/pdf/glaas\\_report\\_2012\\_eng.pdf](http://www.un.org/waterforlifedecade/pdf/glaas_report_2012_eng.pdf) (focusing on the need for greater accountability in increasing access to sanitation and drinking water).

208. *E.g.*, U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Rep.: Ethiopia*, annex, table 15, U.N. Doc. E/C.12/ETH/1-3 (Mar. 28, 2011) (delineating the number of “rural water supply schemes to be rehabilitated”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Rep.: El Salvador*, ¶ 302, U.N. Doc. E/C.12/SLV/3-5 (Oct. 30, 2012) (noting that “between 2005 and June 2010, investments totaling \$38.7 million were made in 521 projects involving the introduction, expansion, improvement, reactivation and repair of systems providing water fit for human consumption”).

209. *See* Chairperson, Comm. on Econ., Soc. & Cultural Rights, Letter dated May 16, 2012 from the Chairperson to All States Parties to the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. CESCER/48th/SP/MAB/SW (May 16, 2012) (observing “the pressure on many States Parties to embark on austerity programmes, sometimes severe, in the face of rising public deficit and poor economic growth” and outlining human rights requirements for any policy changes in this “period of crisis”).

210. *Rep. on the Right to Safe Drinking Water, supra* note 207, ¶ 86; *see also* DE ALBUQUERQUE, *supra* note 91, at 32 (discussing sustainability as a means to avoid retrogression).

211. *See* MEG SATTERTHWAITE ET AL., JMP WORKING GRP. ON EQUITY AND NON-DISCRIMINATION, FINAL REPORT 4 (2012), [http://www.wssinfo.org/fileadmin/user\\_upload/resources/JMP-END-WG-Final-Report-20120821.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/JMP-END-WG-Final-Report-20120821.pdf) [hereinafter JMP WORKING GRP.] (arguing that the Millennium Development Goals often provide a perverse incentive to develop short-term solutions at the expense of long-term sustainability); *see generally* Margaret Satterthwaite, *On Rights-Based Partnerships to Measure Progress in Water and Sanitation*, 20 SCI. & ENG. ETHICS 877 (2014) (examining efforts to develop goals, targets, and indicators in the post-2015 goals for water, sanitation, and hygiene).

principles,<sup>212</sup> states have been hard pressed to report this necessary information on the rights-based approach to safe drinking water and adequate sanitation, raising an imperative to identify the universal indicators that the Committee would need to monitor human rights implementation.

## B. Development of Human Rights Norms

Beyond these changes in state implementation of water and sanitation obligations, state reporting also reflects the normative development of the human rights to water and sanitation through the UN human rights system. Few states discussed safe drinking water or adequate sanitation prior to the CESCR's General Comment 15; where they did, they did so under rights to housing,<sup>213</sup> an adequate standard of living,<sup>214</sup> and health.<sup>215</sup> Although some states parties had reported detailed water information<sup>216</sup> and NGOs had pressed for the formal codification of an independent right,<sup>217</sup> no state had ever before discussed a "right to water" in reporting to the Committee.<sup>218</sup>

212. See Emilie Filmer-Wilson, *The Human Rights-Based Approach to Development: The Right to Water*, 23 NETH. Q. HUM. RTS. 213, 225–26 (2005) (discussing challenges in the rights-based approach and recognizing that "it is not easy to assess the impact or measure the success of the [rights-based approach]").

213. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Fourth Rep. (Addendum): Colombia*, ¶ 326, U.N. Doc. E/C.12/4/Add.6 (Aug. 31, 2000) ("The [housing] situation is particularly critical in the rural sector, where according to the National Household Survey conducted by the DANE in 1997, the coverage figure for piped water supply is 44% and for sewerage 16%.").

214. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Fourth Rep. (Addendum): Russia*, ¶ 286, U.N. Doc. E/C.12/4/Add.10 (Nov. 27, 2001) ("Many rural inhabitants use water from wells, rivers and natural reservoirs for cooking and other domestic purposes. Only 28 per cent of rural settlements have running water.").

215. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third Rep.: New Zealand*, ¶¶ 481–83, U.N. Doc. E/C.12/NZL/3 (Jan. 17, 2011) (describing requirements for access to safe drinking water and portions of the population that do not have drinking water in compliance with national guidelines).

216. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Benin*, ¶¶ 289, 292, U.N. Doc. E/1990/5/Add.48 (Sept. 5, 2001) (reporting the "[p]ercentage breakdown of households by distance from water supply and area of residence" and "[p]ercentage breakdown of households by means of water supply and area of residence").

217. See Peter H. Gleick, *The Human Right to Water*, 1 WATER POL'Y 487, 489 (1998) (concluding "that international law, international agreements and evidence from the practice of States strongly and broadly support the human right to a basic water requirement").

218. This null finding was confirmed through a search of all pre-2003 reports for derivations and permutations of the term "right to water." See *infra* graph on page 193 (detailing the search terms employed in this research). While not relevant to the results reported here, this lack of previous mention

The Committee sought, through General Comment 15 to permanently alter the way that states parties address water and sanitation.<sup>219</sup> Providing the first explicit normative foundation for a “right to water,” General Comment 15 interpreted this right out of the right to health in ICESCR article 12 and the right to an adequate standard of living in ICESCR article 11,<sup>220</sup> and the Committee thereafter requested that states parties report on the implementation of water and sanitation obligations under this independent right.<sup>221</sup> In the wake of the normative developments in General Comment 15, states began to raise the right to water in reporting to the Committee. As the UN human rights system clarified these norms further through the 2007 High Commissioner report,<sup>222</sup> additional states reported explicitly on rights to water and sanitation. These reporting effects became more pronounced with the 2010 General Assembly Resolution on the Right to Water and Sanitation, which gave international political support to these new human rights.<sup>223</sup>

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of a right to water in state reports supports earlier criticisms that General Comment 15 was not developed in response to state reports. *See supra* notes 98–100 and accompanying text (examining debates on the rationale for developing General Comment 15); *see also* Tully, *supra* note 98, at 43–45 (arguing, at the time of General Comment 15, that there was no consistent state practice to recognize water as a human right).

219. Interview with Eibe Riedel, Former Chair, Comm. on Econ., Soc. & Cultural Rights, in Geneva, Switzerland (May 23, 2012).

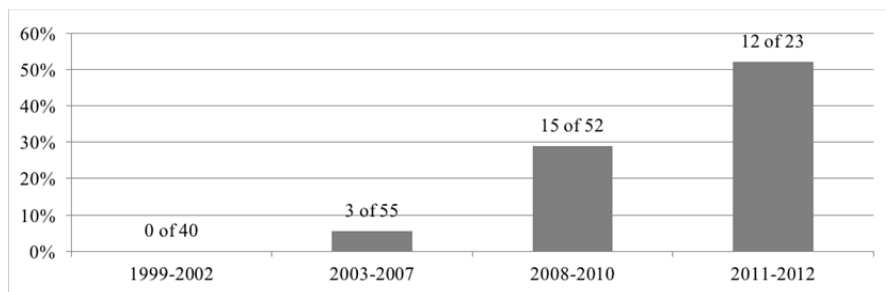
220. *See supra* notes 97–104 and accompanying text (examining the normative foundations of General Comment 15).

221. *See* Langford & King, *supra* note 77, at 480 (noting that “the quality of concluding observations on a particular right usually increases after it has been the subject of a General Comment”); *e.g.*, U.N. Comm. on Econ., Soc. & Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: New Zealand*, ¶ 9, U.N. Doc. E/C.12/1/Add.88 (June 26, 2003) (recognizing government efforts to report on the right to water); U.N. Comm. on Econ., Soc. & Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, ¶ 64, U.N. Doc. E/C.12/CAN/C0/4–E/C.12/CAN/C0/5 (May 22, 2006) (“The Committee strongly recommends that the State party review its position on the right to water, in line with the Committee’s general comment No. 15 (2002) on the right to water, so as to ensure equal and adequate access to water for people living in the State party, irrespective of the province or territory in which they live or the community to which they belong.”).

222. *See supra* notes 100–107 and accompanying text (reviewing the normative evolution of the right to water following General Comment 15).

223. *See supra* notes 113–117 and accompanying text (examining the political declaration of a right to water and sanitation in the UN General Assembly).

### Percentage of Reports Explicitly Raising Human Rights to Water and Sanitation



*Note:* This result was obtained through an autocoding dialogue that highlighted any of the following derivations and permutations of human rights to water and sanitation: Right(s) to Water, Right(s) to Sanitation, Right(s) to Clean Water, Right(s) to Safe Water, Right(s) to Potable Water, Right(s) to Adequate Water, Right(s) to Quality Water, Right(s) to Quality Sanitation, Right(s) to Excreta, Right(s) to Adequate Excreta, Right(s) to Drinking Water, Right(s) to Safe Drinking Water, Right(s) to Sewerage.

Such normative developments in international law have fundamentally changed the language with which states report to human rights treaty bodies, framing how states consider water and sanitation as part of their human rights implementation efforts.

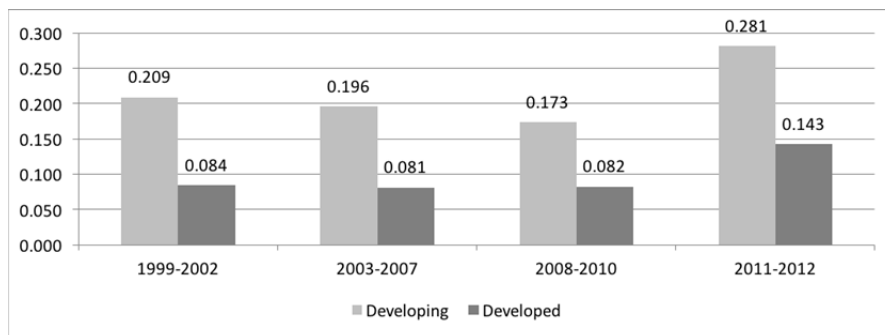
Examining the effect of these normative developments, this study categorized state reports into time periods demarcated by seminal advancements in the normative content of human rights for water and sanitation:

- (a) 1999-2002—Before General Comment 15 (November 2002);
- (b) 2003-2007—Before the High Commissioner's Report (August 2007);
- (c) 2008-2010—Before the General Assembly Resolution (July 2010)/Committee Statement on Right to Sanitation (November 2010); and
- (d) 2011-2012—Current Norms on Human Rights to Water and Sanitation.

As noted in the table above, these developments in international law are reflected in the increased breadth of reporting on the human rights to water and sanitation; however, as discussed below, these normative developments have decreased the depth of that reporting. While expanding the cursory rhetoric on water and sanitation rights, these legal developments have not deepened the normative content of state reporting.

Following from each expansion in international legal standards on water and sanitation rights, there has been a steady contraction in the depth of human rights reporting on water and sanitation, with this paradoxical decrease in the depth of state reporting (driven almost entirely by developing states) reversed only by the 2010 General Assembly Resolution.<sup>224</sup>

### Developing vs. Developed States: Average Codes per Paragraph



Where normative developments have been articulated without the political support or normative detail necessary for treaty monitoring, these pronouncements from within the UN human rights system—despite changing the rhetoric surrounding water and sanitation rights—have been largely ineffectual in changing state implementation.<sup>225</sup> As demonstrated by the results below, the Committee has sought to have states implement rights to water and sanitation independent of wealth and integral to health, but the effects are neither consistent nor sustained due to the lack of detail in normative standards for (1) individual affordability and (2) public health.

224. See Meier et al., *supra* note 113, at 122–29 (arguing that the 2010 General Assembly Resolution provided the first political recognition for the rights to water and sanitation among state governments and a new set of opportunities to realize water and sanitation through national policy). Whereas there appears to be a large increase in reporting (at both the report and paragraph level) in the two years following the 2010 General Assembly Resolution, future research will be needed to determine if this represents a fundamental shift in reporting or simply a temporary increase that dissipates over time.

225. See Emilie Marie Hafner-Burton & James Ron, *Seeing Double: Human Rights Impact Through Qualitative and Quantitative Eyes*, 61 WORLD POL. 360, 368 (2009) (“[M]ost states today ‘talk the talk’ of human rights even if they do not necessarily ‘walk the walk’ . . . .”); SIMMONS, *supra* note 12, at 356 (looking to local stakeholders in domestic decisions to comply with human rights treaties); see also Cole, *supra* note 123, at 167 (reviewing the effects of human rights treaty ratification on state practices).



### 1. AAAQ & the Focus on Affordability

Where the CESCR's General Comment 14 had introduced an AAAQ indicator framework (focused on availability, accessibility, acceptability, and quality) for the right to health,<sup>226</sup> General Comment 15 expanded this focus, introducing an approach that also accounts for affordability (as derived from "economic accessibility") under the right to water.<sup>227</sup> Affordability was seen as crucial in the context of water and sanitation<sup>228</sup>—with states having long focused on water and sanitation as indicators of poverty,<sup>229</sup> with neoliberal constraints facilitating the privatization of national water systems,<sup>230</sup> and with unaffordable water tariffs leading to disconnections, protests, and "water wars."<sup>231</sup> Following a full decade of state reports since the adoption of General Comment 15, however, an examination of these reports supports early fears that this approach lacked definition in framing the progressive realization of the rights to water and sanitation,<sup>232</sup> with state reports selectively addressing the normative content of these rights and largely neglecting the vague indicators of individual affordability.

226. Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶ 12, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter *General Comment 14*].

227. *General Comment 15*, *supra* note 97, ¶¶ 2, 24, 27; see also THE DANISH INST. FOR HUMAN RIGHTS, THE AAAQ FRAMEWORK AND THE RIGHT TO WATER: INTERNATIONAL INDICATORS FOR AVAILABILITY, ACCESSIBILITY, ACCEPTABILITY AND QUALITY 20 (2014), [http://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq\\_international\\_indicators\\_2014.pdf](http://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq_international_indicators_2014.pdf) (noting that affordability "concerns the cost of accessing water and attention is given to whether the cost of water threatens the realization of other rights").

228. Interview with Eibe Riedel, *supra* note 219.

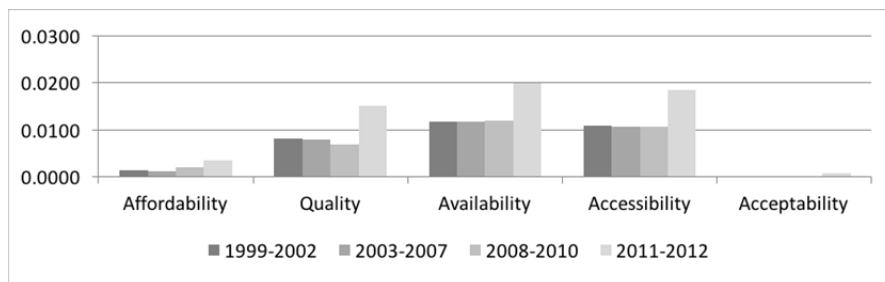
229. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second Rep. (Addendum): Ecuador*, ¶ 295, U.N. Doc. E/1990/6/Add.36 (Dec. 20, 2002) ("Other variables too are directly related to poverty, such as the excessive number of children per family, low educational and cultural levels, especially among mothers, and the lack of sewerage, drinking water and waste collection services."); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Honduras*, ¶ 152, U.N. Doc. E/1990/5/Add.40 (July 23, 1998) (listing six variables of poverty, including "type of housing, number of occupants, quality and accessibility of water, excreta disposal system, access to primary education, and subsistence capacity").

230. See Murthy, *supra* note 156, at 124 ("[P]rivatization of the water sector was perceived as a way to improve the efficiency by transferring the financial burden onto the private sector, lowering the overall costs of services").

231. See Bluemel, *supra* note 96, at 965–66 (discussing the "Cochabamba conflict," in which the privatization of the water supply in Bolivia resulted in price increases which led to violent protests, as paradigmatic of the harms of water privatization).

232. See Cahill, *supra* note 96, at 391 (arguing that the right to water continued to lack status and clarity after General Comment 15).

### Normative Content: Codes per Paragraph



- **Availability/Accessibility** – Where availability is intended to refer to the quantity of water, sanitation, and hygiene facilities sufficient to meet individual needs in all spheres of life and accessibility is intended to refer to the ability to physically access water sources or sanitation facilities,<sup>233</sup> states often do not distinguish information on availability and accessibility in reports to the Committee, using these terms interchangeably to refer to the amount of water utilized,<sup>234</sup> the presence of water and sanitation within homes and workplaces,<sup>235</sup> or the utilization of a specific water source or sanitation facility.<sup>236</sup> Because of this normative conflation in state reports, it may be necessary to detail further the distinctions between these normative indicators to assure appropriate

233. *General Comment 15*, *supra* note 97, ¶ 12.

234. While the Committee has never enumerated a specific quantity of water that should be available, it has frequently referenced World Health Organization guidelines, which specify that a minimum of twenty liters per day are necessary for survival. Peter Gleick, *Basic Water Requirements for Human Activities: Meeting Basic Needs*, 24 *WATER INT'L* 83, 85 (1996).

235. See e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third Rep. (Addendum): Hungary*, ¶ 348, U.N. Doc. E/C.12/HUN/3 (Feb. 17, 2006) (stating that “[r]unning water is available in 93-96% of households”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Benin*, ¶ 151, U.N. Doc. E/1990/5/Add.48 (Sept. 5, 2001) (“Drinking water, washbasins, showers, changing rooms, toilets and overalls must also be made available to workers.”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second & Third Reports: Paraguay*, ¶ 396, U.N. Doc. E/C.12/PRY/3 (Feb. 26, 2007) (providing data on “[p]rivate dwellings according to availability of electricity and running water”).

236. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second Rep.: Slovakia*, ¶ 273, U.N. Doc. E/C.12/SVK/2 (Jan. 14, 2011) (“Availability of drinking water to Slovak citizens improved in 2007 compared to the previous year, with 86.5 per cent of Slovak population supplied by public water distribution systems.”).

implementation in state practice and accurate reporting to the CESC.

- **Acceptability** – Having been overlooked in General Comment 15, discussion of acceptability for the rights to water and sanitation is a clear outlier in state reporting, with average discussion on this indicator approaching zero across all time periods. As acceptability is seen as integral to individual dignity, a central feature of human rights,<sup>237</sup> this near absence of reporting on social and cultural acceptability (particularly, as now recognized by the Committee, in the context of sanitation and hygiene<sup>238</sup>) presents a troubling disconnect between the normative prioritization of this indicator under international law and national efforts to implement this norm in water and sanitation practice.<sup>239</sup>
- **Quality** – Linking water and sanitation, international law requires that drinking water be safe for consumption, with water services, sanitation facilities, and hygiene practices that prevent human excreta from contaminating water supplies and harming public health.<sup>240</sup> Although the term “safe” is considered imprecise in the water and sanitation communities, as it fails to specify the composition of drinking water,<sup>241</sup> states nevertheless report on quality using declarations of “safe water,” often without definition,

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237. Malcolm Langford et al., *A Right to Sanitation? Demands, Norms and Implications*, in *THE RIGHT TO WATER: THEORY, PRACTICE AND PROSPECTS* (forthcoming) (emphasizing dignity “as the key idea or foundation of human rights” and arguing that “[t]his idea of dignity and autonomy particularly resonates with the right to sanitation”).

238. See *supra* note 118 and accompanying text (discussing the addition of acceptability in the Committee’s 2010 Statement on the Right to Sanitation); see also *Rep. of the Independent Expert*, *supra* note 118, ¶ 80 (“Personal sanitation is still a highly sensitive issue across regions and cultures and differing perspectives about which sanitation solutions are acceptable must be taken into account regarding design, positioning and conditions for use of sanitation facilities.”).

239. N. Singh, *Socio-Cultural Norms, Human Rights and Access to Water and Sanitation*, in *THE RIGHT TO WATER: THEORY, PRACTICE AND PROSPECTS*, *supra* note 237; see, e.g., Inga T. Winkler & Virginia Roaf, *Taking the Bloody Linen out of the Closet: Menstrual Hygiene as a Priority for Achieving Gender Equality*, 21 *CARDOZO J. L. & GENDER* 1, 21 (2014) (arguing, in the context of stigma surrounding menstruation, that “it must be ensured that women and girls can actually use sanitation facilities—including on the days they menstruate—rather than being excluded from using them due to cultural beliefs of ‘impureness’ and ‘contamination’”).

240. *General Comment 15*, *supra* note 97, ¶ 12; see DE ALBUQUERQUE, *supra* note 91, at 43–46 (detailing challenges to water and sanitation quality and safety).

241. See ANNETTE PRÜSS-ÜSTÜN ET AL., WORLD HEALTH ORG., *SAFER WATER, BETTER HEALTH: COSTS, BENEFITS AND SUSTAINABILITY OF INTERVENTIONS TO PROTECT AND PROMOTE HEALTH* 29–53 (2008), [http://apps.who.int/iris/bitstream/10665/43840/1/9789241596435\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43840/1/9789241596435_eng.pdf) (comparing levels of water-borne disease across countries).

qualification, or data on water content.<sup>242</sup> With this misnomer extended by the 2010 General Assembly Resolution and the mandate of the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation,<sup>243</sup> this language on safety in state reports, when used without qualifying language or scientific data on chemical hazards and microorganism contaminants, lacks the detail required to assess the quality of drinking water and sanitation necessary to protect health.<sup>244</sup>

- **Affordability** – While affordability, which refers to the financial feasibility of household expenditures on water and sanitation (without limiting the ability to buy other basic goods and services), has shown a steep increase in state reporting since General Comment 15 (from 0.0014 codes per paragraph in 1999–2002 to 0.0035 codes per paragraph in 2011–2012), this attention to affordability in state reports pales in comparison to the normative focus of state reporting on availability, accessibility, and quality. Requesting further information on individual affordability in the 2008 Reporting Guidelines, the Committee recommended that states report on “[t]he measures taken to ensure that water services, whether privately or publicly provided, are affordable for everyone.”<sup>245</sup> However, despite this increasing focus on affordability in the human rights system, the lack of detail in defining this indicator has kept it from being applied in state reports as being of equal importance with other norms of water and sanitation rights.<sup>246</sup>

242. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Greece*, ¶ 487, U.N. Doc. E/1990/5/Add.56 (Oct. 23, 2002) (“One hundred per cent of the urban population and 62 per cent of the rest is served, as regards access to safe water, through access to a piping system, while the rest has similar access to other ways, such as aqueduct etc.”).

243. See generally Human Rights Council Res. 24/18, *supra* note 116 (replacing language on “quality” with “safety” and recognizing “that the human right to safe drinking water and sanitation entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and acceptable, and that provides privacy and ensures dignity”).

244. See DE ALBUQUERQUE, *supra* note 91, at 35 (defining quality to assure that water “must be free from microorganisms, chemical substances and radiological hazards that constitute a threat to human health”). The imprecise connections between WASH (water, sanitation, and hygiene) and public health are addressed in greater detail in Part IV.B.2.

245. 2008 Reporting Guidelines, *supra* note 82, ¶ 48(c) (citing General Comment 15, *supra* note 97, ¶¶ 24, 27).

246. See DANISH INST. FOR HUMAN RIGHTS, *supra* note 227, at 20, 31 (outlining multiple definitions of affordability); cf. Murthy, *supra* note 156, at 133 (“Achieving affordability and having safety nets in place for the poor, while simultaneously ensuring that there are adequate finances to make

The Committee has increasingly focused on individual affordability as an indicator of economic, social, and cultural rights;<sup>247</sup> however, this normative focus has not borne itself out in the water and sanitation content of state reports.<sup>248</sup> Blunting human rights debates on the privatization of water and sanitation systems,<sup>249</sup> General Comment 15 largely skirted issues of affordability in the context of protecting individuals from human rights interference by private actors.<sup>250</sup> Despite subsequent UN efforts to address tariff setting for water and sanitation,<sup>251</sup> states have only vague indicators of affordability by which to consider the “maximum available resources” necessary to progressively realize water and sanitation and to report on these financing and budgeting issues to the Committee.<sup>252</sup>

In the absence of this necessary detail on obligations to realize individual affordability, states have largely shirked responsibility for

needed investments and expansions in water and sanitation services, are probably the greatest challenges in implementing the human right to water and sanitation.”).

247. Interview with Eibe Riedel, *supra* note 219 (discussing the evolution of the Committee’s approach to affordability).

248. In a rare discussion of water affordability in reporting to the CESCR, see U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third & Fourth Reports: Jamaica*, ¶ 172, U.N. Doc. E/C.12/JAM/3-4 (June 14, 2011) (“Although the water rates charged by private water providers are not controlled by the Government, measures are taken to ensure affordability. For example, through the Ministry’s water utility, the National Water Commission (NWC), the Ministry has offered a lifeline of three thousand gallons (3000 gal.) at a subsidized rate. This is more than the minimum requirement as stipulated by the World Health Organization (WHO).”).

249. See *supra* notes 229–231 and accompanying text.

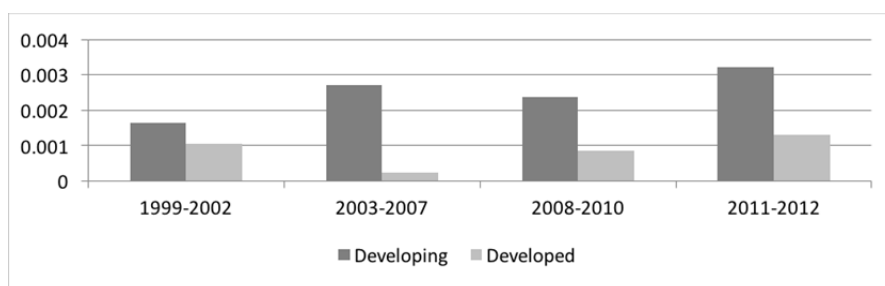
250. See Craven, *supra* note 91, at 47 (arguing in the context of water privatization that “one may sense that the Committee may be legislating for its own absence - or excluding its own competence - in the very area in which the discussion of water rights is most acute and in which the Committee’s voice is perhaps most needed”); Langford & King, *supra* note 77, at 512 (“An earlier draft was stronger - calling for the deferral of privatisation until a regulatory framework was in place - though this was ultimately removed.”).

251. CATARINA DE ALBUQUERQUE, *Financing, Budgeting and Budget Tracking for the Realisation of the Human Rights to Water and Sanitation*, in WATER AND SANITATION HANDBOOK, *supra* note 91, at 19 (“The tariff structure for formal service provision must guarantee that people living in poverty have access to adequate services, regardless of ability to pay.”). Confronting ongoing issues of affordability in Detroit, Michigan, de Albuquerque joined with other UN rapporteurs in a joint “urgent appeal” to the Detroit Water and Sewerage Department, calling attention to the increasing unaffordability of water and warning that the disconnection of water services to households for lack of payment may constitute a violation of the human right to water and sanitation. *Detroit: Disconnecting Water From People Who Cannot Pay - An Affront to Human Rights, Say UN Experts*, OHCHR (June 25, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777>.

252. See DE ALBUQUERQUE, *supra* note 251, at 18 (recognizing a lack of information on individual affordability and concluding that “it can be difficult to know the impact on different populations of the costs of water and sanitation services, or whether these services meet affordability standards”); Aoife Nolan, *Budget Analysis and Economic and Social Rights*, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: CONTEMPORARY ISSUES AND CHALLENGES 369, 374 (Eibe Riedel et al., eds. 2014) (“How can one evaluate budgetary compliance with ESR standards if those standards are not clear?”).

reporting on water and sanitation financing and shifted their reporting on affordability to address international assistance and cooperation,<sup>253</sup> wherein developing states are far more likely to discuss international assistance for water and sanitation facilities than to discuss individual affordability of water and sanitation services.

### Assistance and Cooperation: Average Codes per Paragraph



Reflecting this focus on the extraterritorial obligations of developed states to realize water and sanitation rights in the developing world, developing states came together in the 2010 UN General Assembly Resolution to:

Call[] upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all . . . .<sup>254</sup>

While this language on “international assistance and cooperation” was eliminated from subsequent resolutions in the UN Human Rights Council,<sup>255</sup> developing states have continued to focus their water and

253. This focus on international assistance and cooperation derives originally from the Committee’s interpretation of international obligations in ICESCR Article 2, with General Comment 15 extending these international obligations to water and sanitation: “Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required.” *General Comment 15*, *supra* note 97, ¶ 34.

254. *See supra* notes 113–117 and accompanying text (noting the process of developing the 2010 General Assembly Resolution). *See also* Bruce Pardy, *The Dark Irony of International Water Rights*, 28 PACE ENVTL. L. REV. 907, 909–10 (2011) (discussing early concerns that the General Assembly Resolution would allow states to compel other states to provide financial resources for water provision).

255. *See generally* Human Rights Council Res. 15/L.14, U.N. Doc. A/HRC/15/L.14 (Sept. 24, 2010).

sanitation reporting on international assistance.<sup>256</sup> Leading to detrimental inconsistencies in state reporting to the CESCR on national financing and individual affordability,<sup>257</sup> additional detail on affordability obligations would provide the clarity needed to develop standard indicators on the national funding necessary to implement obligations for the rights to water and sanitation.<sup>258</sup>

## 2. Public Health Impacts

As water, sanitation, and hygiene (referred to collectively as “WASH”) are underlying determinants of public health, rights to water and sanitation are thought to be derivative of the right to health.<sup>259</sup> Yet, if water and sanitation rights arise out of obligations under the right to health, this is not clear in state reports. Where the development of an independent right to water in General Comment 15 has led, conversely, to an overall decline in national focus on the health implications of inadequate WASH, state reporting on such intersectional rights<sup>260</sup> (at the intersection of the right to

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256. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Indonesia*, ¶ 175, U.N. Doc. E/C.12/IDN/1 (Oct. 29, 2012) (noting that water and sanitation “programmes were implemented through CWSH, Pro Air, WHO, WSLIC-2 and The Program of Drinking Water Supply and Community Based Sanitation (PAMSIMAS) activities that include activities on educating and supplying drinking water facilities and rural basic sanitation to poor people with the objective to leverage health status, productivity, and life quality of low income society in rural areas, especially in fulfilling the need of safe drinking water and sanitation”).

257. See Takhmina Karimova, *The Nature and Meaning of ‘International Assistance and Cooperation’ under the International Covenant on Economic, Social and Cultural Rights*, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: CONTEMPORARY ISSUES AND CHALLENGES, *supra* note 252, at 163, 173 (finding that “the Committee on ESC rights has not been entirely clear on what is meant by referring to international assistance and cooperation and which purpose such a reference is meant to serve”).

258. See DE ALBUQUERQUE, *supra* note 251, at 21 (concluding that “States must consider whether to limit the percentage of profits that may be extracted from the provision of public services, such as water and sanitation, in order to use the ‘maximum available resources’ to realise their human rights obligations”). To clarify the norms surrounding affordability of water and sanitation services, the second Special Rapporteur, Léo Heller, has addressed this issue in his first report to the UN Human Rights Council in September 2015.

259. *Supra* notes 97–99 and accompanying text (discussing the origins and text of General Comment 15); see also Jamie Bartram, Representative of the W.H.O., Oral submission, Day of General Discussion on the Draft General Comment on the Right to Water, UN CESCR 29th Session, Nov. 22, 2002; WORLD HEALTH ORG., THE RIGHT TO WATER 8 (2003) (discussing the role of water and sanitation in the CESCR’s interpretation of the right to health in General Comment 14).

260. Human rights can be seen to interact ‘intersectionally’ in both direct and indirect ways, with the realization of one right affecting the realization of others and creating a net effect that is greater than the sum of its constituent rights. See generally Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women’s International Human Rights Violations*, 52 EMORY L.J. 71 (2003).

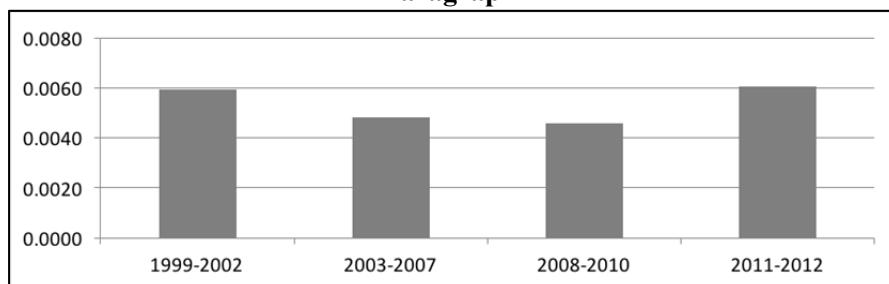
health and rights to water and sanitation) has faded over time and lacked consistency across states.

Prior to the General Comment 15, states reported much of their water and sanitation information under the right to health, with the 1991 Reporting Guidelines requesting state reporting under the right to health on “population access to safe water.”<sup>261</sup> The CESCR’s 2000 General Comment 14 on the right to health defined “determinants of health” in a way that drew specific attention to water and sanitation:

The Committee interprets the right to health . . . as an inclusive right extending not only to timely and appropriate health care but also to the *underlying determinants of health, such as access to safe and potable water and adequate sanitation*, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.<sup>262</sup>

However, followed shortly thereafter by the CESCR’s 2002 General Comment 15 on the right to water, health indicators in the context of reporting on water and sanitation rights decreased by over 23 percent between 1999–2002 and 2008–2010, with the development of an independent right to water diverting attention from WASH determinants of health and leading to an overall decline in state focus on the health implications of inadequate water and sanitation.

#### **Health in the Context of Water and Sanitation: Average Codes per Paragraph**



It is only after the 2010 UN General Assembly Resolution that state reporting on the interrelationship between health and water and sanitation returns to pre-2002 levels. In particular, where the content of sanitation

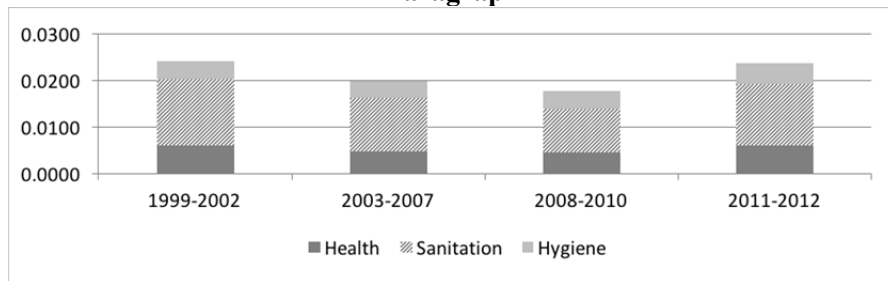
261. 1991 Reporting Guidelines, *supra* note 80, at 15.

262. *General Comment 14*, *supra* note 226, ¶ 11 (emphasis added).



obligations was thought to remain weak in the wake of General Comment 15,<sup>263</sup> it appears that the UN General Assembly's declaration—joining water and sanitation into a singular, composite human right<sup>264</sup>—and the Committee's Statement on the Right to Sanitation have finally overcome the weaknesses of previous normative advancements through the UN human rights system and reversed a steady decrease in state reporting on sanitation issues.<sup>265</sup>

### Disaggregating Health, Sanitation, and Hygiene: Average Codes per Paragraph



In the absence of the normative detail necessary for consistent reporting across nations, state reporting at the intersection of health, water, and sanitation has varied with geographic context. While the health implications of safe drinking water and adequate sanitation are not determined solely by geography, states have often focused their intersectional reporting on the geographic particularities of their countries, whether in the context of:

- (a) **Environmental Protection** – drinking water testing,<sup>266</sup> freshwater contamination,<sup>267</sup> and ecosystem pollution,<sup>268</sup>

263. Cahill, *supra* note 96, at 390.

264. G.A. Res. 64/292, *supra* note 114, at 2.

265. Presaging the influence of the 2010 General Assembly Resolution on sanitation rights, the UN Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation devoted her first 2009 report to defining sanitation rights. *Rep. of the Independent Expert*, *supra* note 118, ¶¶ 8–12.

266. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Fourth Rep. (Addendum): United Kingdom of Great Britain and Northern Ireland*, ¶ 11.48, U.N. Doc. E/C.12/4/Add.8, (Feb. 28, 2001) (“Drinking water quality has improved considerably since 1990. In 1998, 98.34 per cent of around 180,000 tests met the standards with 2,994 tests failing the standards. This compares with 1991 when 98.02 per cent of around 227,000 tests met the standards with 4,490 tests failing the standards. In all cases where a failure occurred which was considered to be a risk to health, emergency measures were implemented to protect public health.”).

- (b) **Infectious Disease Control** – water-borne diseases, with a focus on reducing endemic diarrheal diseases and epidemic disease outbreaks<sup>269</sup> through sanitation systems<sup>270</sup> and improved hygiene;<sup>271</sup> or
- (c) **Health Promotion** – water scarcity,<sup>272</sup> malnutrition,<sup>273</sup> and food security.<sup>274</sup>

267. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Fourth Rep. (Addendum): Ukraine*, ¶ 291, U.N. Doc. E/C.12/4/Add.2 (Mar. 21, 2000) (noting state guidelines on acceptable levels of the radioactive contamination of drinking water); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Cambodia*, ¶ 634, U.N. Doc E/C.12/KHM/1 (Jan. 7, 2009) (noting that the Ministry of Rural Development has set a national standard on drinking water and undertakes to “test for poisonous substances (arsenics) . . . for wells in 1,607 targeted villages . . . and urban areas around Phnom Penh, to define whether or not the water of those wells is drinkable”).

268. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Albania*, at 6, table 1, U.N. Doc E/1990/5/Add.67 (Apr. 11, 2005) (“To prepare and implement appropriate national policies on sewage and wastewater collection and treatment, leading to a reduction of soil and water contamination by uncontrolled disposal of waste and an improvement in sanitary and health conditions.”).

269. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Brazil*, ¶ 608, U.N. Doc. E/1990/5/Add.53 (Nov. 20, 2001) (“Places with high rates of diseases related to precarious sanitary situations, such as schistosomiasis, cholera, typhoid fever and high infant mortality rates caused by diarrhoea, may be assigned funds that will guarantee access to treated water and sewage disposal, while upgrading the sanitary conditions in individual households.”); U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Mauritania*, ¶ 261, U.N. Doc. E/C.12/MRT/1 (May 20, 2011) (“Childhood diarrhoea is one of the main causes of infant and child mortality. . . . Parasitic infections in general, and intestinal parasitic infections in particular, pose a real health problem, especially in the south and south-east areas, and account for up to 10 per cent of consultations involving children under 5. There are worrying new outbreaks of schistosomiasis, and intestinal schistosomiasis in particular, as a result of the development of the Senegal River.”).

270. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second to Fourth Reports: Afghanistan*, ¶ 117, U.N. Doc. E/C.12/AFG/2-4 (July 9, 2009) (“In Afghanistan, population uses different disposal facilities according to living settings, and most population still does not have access to toilet facilities. The traditional covered latrine and *dearan* and/or *sahrah*, which is a place within or an outside compound for waste products, animal manure, fire end products and used as toilet as well. *Dearan/Shrah* is still common as toilet facilities, however, highly unsanitary, and a major public health problem.”).

271. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Combined Second to Fourth Reports: Rwanda*, ¶ 258, U.N. Doc. E/C.12/RWA/2-4 (Oct. 4, 2011) (noting government environmental hygiene policy to raise public awareness of the need for hand washing).

272. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Brazil*, ¶ 596, U.N. Doc. E/1990/5/Add.53 (Nov. 20, 2001) (“In 1998 and 1999, the drought that assailed north-east Brazil resulted in a severe water supply crisis, even in the state capitals, paving the

Where the linkages between the right to health and the rights to water and sanitation remain unclear, it is necessary to further clarify the nature of these intersectional rights relationships, assuring that implementation at the intersection of rights is not neglected in efforts to address each right in isolation.<sup>275</sup> Developing detailed, universal indicators across these rights would provide greater direction to states parties on the public health implications of safe drinking water and adequate sanitation, facilitating the standardization of state reports while maintaining flexibility for states to address the contextual issues most pertinent to the national context.

Despite the dramatic development of human rights norms for water and sanitation, the “right to water and sanitation” remains a mere shibboleth in state reporting, frequently invoked but rarely considered. The UN human rights system intends its normative standards to frame indicators for state parties to implement their human rights obligations, but the normative standards for the rights to water and sanitation have been insufficiently detailed to influence consistent implementation efforts. To the extent that this limited impact of the UN human rights system in

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way for the reappearance of [cholera.]”); U.N. Econ. & Soc. Council], Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): Croatia*, ¶ 324, U.N. Doc. E/1990/5/Add.46 (Aug. 21, 2000) (“In addition, there was a serious drought in south Dalmatia, and the danger of outbreak of epidemics of various infectious diseases was very high.”).

273. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Second and Third Reports: Paraguay*, ¶ 418, U.N. Doc. E/C.12/PRY/3 (Feb. 26, 2007) (“It can also be said the incidence of chronic general malnutrition among children living in homes without drinking water that obtain their water from a stream/lake or pumpless well was considerably higher than those with homes supplied with water by ESSAP, SENASA or a private network . . .”).

274. U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep. (Addendum): People’s Republic of China*, ¶ 138, U.N. Doc. E/1990/5/Add.59 (Mar. 4, 2004) (“Because of rising demand, the shortage of available land and water resources and the degradation of the natural environment, China will soon be facing conflicts in its ability to ensure the right to adequate food.”).

275. See Cahill, *supra* note 96, at 394–95 (“This relationship between related rights and the right to water needs to be investigated and the parameters of each established in order to define the scope and core content of the right to water and to ensure effective implementation of the right through clarity of provisions.” (emphasis added)); DE ALBUQUERQUE, *supra* note 91, at 37 (recognizing the indivisibility of rights and noting the link between health and water and sanitation based upon the childhood death resulting from diarrhea); Stephen Luby, Comment, *Is Targeting Access to Sanitation Enough?*, 2 LANCET GLOBAL HEALTH e619, e619 (2014) (recognizing that “[we] do not have strong evidence about the relation between sanitation and health because such data are difficult and expensive to generate” and pointing to future studies that could “provide conclusive evidence that approaches being implemented to improve sanitation in low-income communities actually improve health”). Given this inconsistent state focus on water quality, infectious disease control, and health promotion, a corresponding study is being undertaken to disentangle the varied ways that states report health information to the Committee and how this health reporting has changed over time in response to normative developments in the human right to health and concluding observations by the CESCR.

developing human rights norms is apparent for other rights, treaty bodies will need to work with states parties to further clarify the scope and content of implementation obligations under international law.

### C. Specificity of Reporting Guidelines

Whereas normative developments seek a widespread effect on the implementation of human rights, treaty body reporting guidelines seek a more limited influence on the indicators reported by states to monitor the implementation of human rights.<sup>276</sup> By specifying the form and content of every state report, reporting guidelines help to standardize reports, requesting consistent information on implementation and allowing comparisons over time and across countries.<sup>277</sup> Yet there is a cost to such specificity. Reporting guidelines have the effect of corseting state reports, focusing them on specific indicators while limiting treaty body efforts to mainstream interconnected rights through the reporting process.

Building from the Committee's 1991 Reporting Guidelines, which specified only select water and sanitation indicators under either the right to housing or the right to health,<sup>278</sup> the Committee's November 2008 Reporting Guidelines requested an independent reporting section on the "Right to Water," including in it almost all of the information sought by the CESCR on water and sanitation rights.<sup>279</sup> States have largely tailored their reporting in accordance with these new Guidelines, and as a result, the addition of a Right to Water section has concentrated water and sanitation reporting into a more limited set of paragraphs in state reports. Highlighting the ways in which this focused reporting is concentrating information within state reports while constraining cross-cutting attention

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276. See WOUTER VANDENHOLE, *THE PROCEDURES BEFORE THE UN HUMAN RIGHTS TREATY BODIES: DIVERGENCE OR CONVERGENCE?* 153–54 (2004); Audrey R. Chapman, *Monitoring Women's Right to Health Under the International Covenant on Economic, Social and Cultural Rights*, 44 AM. U.L. REV. 1157, 1166 (1995) (criticizing the generality of the Committee's 1991 Reporting Guidelines on the right to health for inappropriate indicators by which to disaggregate data by sex).

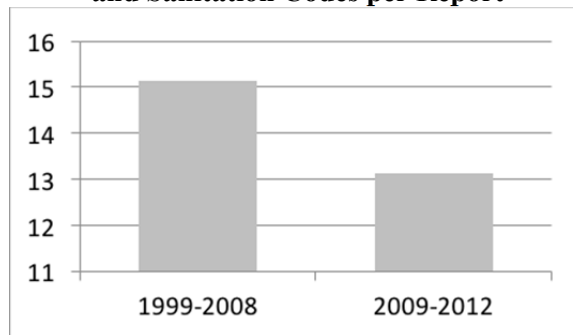
277. *2008 Reporting Guidelines*, *supra* note 82, at 1 ("The purpose of reporting guidelines is to advise States parties on the form and content of their reports, so as to facilitate the preparation of reports and ensure that reports are comprehensive and presented in a uniform manner by States parties."); see also Makau Mutua, *The African Human Rights Court: A Two-Legged Stool?*, 21 HUM. RTS. Q. 342, 348–49 (1999) (criticizing ambiguities in reporting guidelines for the African Commission and noting the resulting deficiencies in state reports).

278. *1991 Reporting Guidelines*, *supra* note 80, at 13, 15; see also Philip Alston, *The International Covenant on Economic, Social and Cultural Rights*, in *MANUAL ON HUMAN RIGHTS REPORTING* 63, 124, 138–39 (1997) (describing the CESCR reporting process following the 1991 Reporting Guidelines).

279. *2008 Reporting Guidelines*, *supra* note 82, at 11. Notwithstanding this separate section on the Right to Water, the Committee's November 2008 Reporting Guidelines would continue to include select reporting obligations for water and sanitation under the right to housing and right to health.

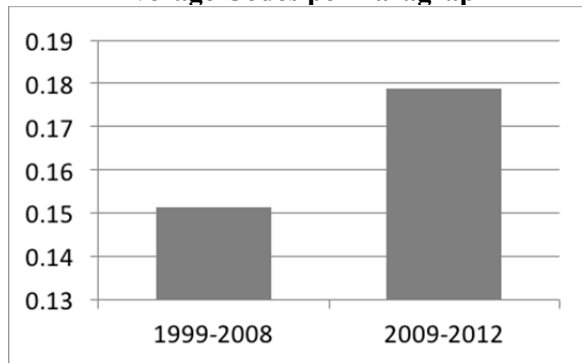
to water and sanitation issues throughout state reports, the advent of the 2008 Reporting Guidelines has been followed by a 13.0% reduction in the number of paragraphs addressing water and sanitation in state reports alongside an 18.0% increase in the average number of water and sanitation codes per paragraph.

**Average Number of Paragraphs Containing Water and Sanitation Codes per Report**



*Note:* This reduction in water and sanitation paragraphs corresponds with a reduction in the overall length of reports, wherein the average number of paragraphs per report declines from 539 to 418 paragraphs per report after the introduction of the 2008 Reporting Guidelines.

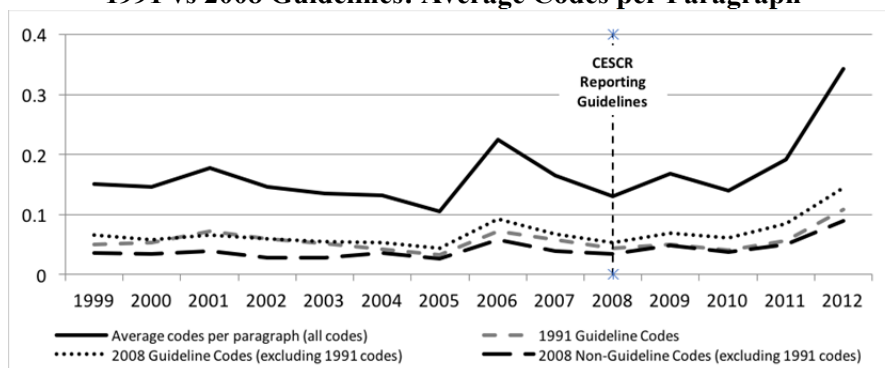
**Average Codes per Paragraph**



However, even as concentrated reporting has resulted in a proportional increase in the depth of water and sanitation reporting, there is no consistency in the indicators addressed by states in that reporting—with no difference between the indicators that are explicitly mentioned in the 2008 Reporting Guidelines and those that are not. Using the non-2008 Reporting Guideline indicators as control codes (i.e., codes that should not be affected by the 2008 Reporting Guidelines), this study examined the

frequency of the 2008 Reporting Guideline codes (separating out 1991 Reporting Guideline codes) to clarify the independent impact of the 2008 Reporting Guidelines on state reporting patterns. Although the indicators requested by the 2008 Reporting Guidelines were already being reported at a higher frequency than non-2008 Guideline indicators, there is no difference in the trend or trajectory of these codes following the 2008 Reporting Guidelines, illustrating the lack of influence of the 2008 Reporting Guidelines in directing state reports toward a specific set of indicators in their water and sanitation reporting.<sup>280</sup>

### 1991 vs 2008 Guidelines: Average Codes per Paragraph



Thus, while the quantity of attention to safe drinking water and adequate sanitation has increased following the 2008 Reporting Guidelines, the quality of information has not improved, as states have not responded to the Guidelines by reporting in greater depth on the specific indicators requested by the Guidelines. To the extent that there is thought to be a tradeoff between concentrating information within state reporting and mainstreaming rights throughout state reporting, it appears that the Committee has sacrificed the mainstreaming of water and sanitation rights throughout state human rights reports without any appreciable increase in the specificity of information within this concentrated Right to Water section. As seen in the 2008 Reporting Guidelines' focus on (1) moving toward quantitative data and (2) shifting away from the right to adequate housing, the Reporting Guidelines have concentrated water- and sanitation-based reporting without ensuring consistency across state reports.

280. Based upon these data, the development of the 2008 Reporting Guidelines appears to be endogenous, in that they were created based upon what states were already reporting with respect to water and sanitation, putting into Reporting Guidelines the reporting practices that were already taking place.

### 1. Quantitative Data

Transitioning away from a longstanding tradition of descriptive narratives in human rights reporting, quantitative reporting has come to be seen as the ideal in monitoring human rights progress,<sup>281</sup> and with this understanding of the value of statistical information, the UN has advocated the “use of appropriate quantitative indicators for assessing the implementation of human rights.”<sup>282</sup> Despite the moral reductionism inherent in describing individual human rights experiences through population-level statistics,<sup>283</sup> this emphasis on monitoring through quantitative data reporting has spread across all human rights treaty bodies, with the UN seeking to identify statistics that allow for comparisons across countries (permitting ordinal ranking) and over time (assessing progressive realization).<sup>284</sup> As a basis to monitor the progressive realization of economic, social, and cultural rights, the CESCR reasoned that quantitative reporting would improve the transparency, consistency, and objectivity of reports,<sup>285</sup> mitigating the administrative burdens of narrative-based self-reporting<sup>286</sup> while providing a means to monitor state implementation from

281. Malcolm Langford & Sakiko Fukuda-Parr, *The Turn to Metrics*, 30 NORDIC J. HUM. RTS. 222, 222 (2012) (noting that “the field of human rights has not been immune from a global shift towards quantitative measurement in all fields of human activity”).

282. OHCHR 2006 Rep. on Indicators, *supra* note 170, ¶ 35.

283. See Merry, *supra* note 157, at S87 (“Indicators measure aggregates, while human rights are held by individuals. Building a composite index of human rights performance promotes quick comparisons of countries along a scale but ignores the specificity of various human rights and conceals particular violations.”).

284. Rosga & Satterthwaite, *supra* note 168, at 270 (“Thus, indicators were seen as a way of measuring progress over time, of capturing the extent to which ESC rights were being realized – and thus enjoyed by the beneficiaries of these rights – and of helping to develop the core content of ESC rights. Indicators were seen as a way of allowing for comparison across countries, and within countries across time.”); Sakiko Fukuda-Parr et al., *An Index of Economic and Social Rights Fulfillment: Concept and Methodology*, 8 J. HUM. RTS. 195, 197 (2009) (promoting the use of “survey-based objective data from authoritative national and international series, rather than subjective assessments” in order to capture “both the right bearer and duty bearer perspectives, and the obligations of progressive realization of human rights subject to maximum available resources”).

285. *General Comment 14*, *supra* note 226, ¶¶ 53, 57–58 (requiring state adoption of a national strategy for implementing the right to health that includes “corresponding right to health indicators and benchmarks”); see also Eitan Felner, *Closing the ‘Escape Hatch’: A Toolkit to Monitor the Progressive Realization of Economic, Social, and Cultural Rights*, 1 J. HUM. RTS. PRAC. 402, 404 (2009) (arguing “that quantitative tools are crucial for monitoring the impact of public policies related to resource allocation and distribution on the enjoyment and realization of ESC rights”); THÉRÈSE MURPHY, HEALTH AND HUMAN RIGHTS 134–41 (2013) (discussing the origins of the Committee’s focus on quantitative indicators in its efforts to assess implementation of the right to health).

286. See generally Rajeev Malhotra & Nicolas Fasel, *Quantitative Human Rights Indicators: A Survey of Major Initiatives* (paper presented at the Nordic Network Seminar in Human Rights Research, Turku/Åbo, Finland, March 10–13, 2005), <http://www.gaportal.org/sites/default/files/Quantitative%20Human%20Rights%20Indicators.pdf>.

a distance.<sup>287</sup> Culminating in the Committee's 2008 Reporting Guidelines, the CESCR requested that states provide "[s]tatistical data on the enjoyment of each Covenant right,"<sup>288</sup> with specific attention to data concerning the "percentage of households without access to sufficient and safe water in the dwelling or within its immediate vicinity, disaggregated by region and urban/rural population."<sup>289</sup> Yet despite focusing states on quantitative reporting, there are limitations to the applicability of quantitative indicators to water and sanitation, and as a result, this move toward statistical data reporting has not led to any substantial change in the information reported to the Committee.

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287. See Rosga & Satterthwaite, *supra* note 168, at 283 (noting that statistics facilitate a "distancing" that can allow for greater objectivity in reporting).

288. 2008 Reporting Guidelines, *supra* note 82, ¶ 3(g) (requesting "[s]tatistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years"); Interview with Virginia Brás Gomes, Member and Former Chair of the U.N. Comm. on Econ., Soc. & Cultural Rights, in Geneva, Switzerland (May 6, 2014).

289. 2008 Reporting Guidelines, *supra* note 82, ¶ 48(b).



To examine the evolution of quantitative reporting to the Committee, it is possible to focus on the “co-occurrence” of specific indicators with quantitative data. By identifying the number of paragraphs that apply both a thematic code and the quantitative “form of data” code—before and after the 2008 Reporting Guidelines—this co-occurrence analysis provides a measure of the changing ways that quantitative data are operationalized in reporting on various indicators of the rights to water and sanitation:

### Frequency of Quantitative Co-occurrence in State Reports

	1999-2008		2009-2012	
	Quantitative Co-occurrence	Percent Co-occurring	Quantitative Co-occurrence	Percent Co-occurring
TYPE OF INFORMATION				
Structure	29	8.5%	15	8.6%
Process	166	19.9%	98	23.0%
Outcome	392	77.0%	165	79.7%
NORMATIVE CONTENT				
Affordability	19	24.4%	11	17.5%
Quality	168	36.0%	76	31.8%
Availability	283	40.9%	133	37.2%
Accessibility	280	44.0%	127	39.8%
Acceptability	7	70.0%	1	20.0%
HUMAN RIGHTS PRINCIPLES				
Non-discrimination and Equality	2	10.0%	1	5.9%
Participation	5	10.0%	8	17.4%
Accountability	51	25.4%	33	25.8%
Sustainability	11	24.4%	6	13.3%

- **Type of Information** – Prior to the 2008 Reporting Guidelines, quantitative data was used most frequently when describing outcomes and less frequently to describe structure or process. Outcome indicators co-occurred (i.e., were reported together) with quantitative data in 77.0% of all instances where outcome information was reported, process indicators 19.9%, and structure indicators only 8.5%. However, in spite of the Committee’s increased focus on statistical data in the 2008 Reporting

Guidelines,<sup>290</sup> the magnitude of quantitative discussion increased only slightly following those Guidelines, indicating an inability of statistical data to capture certain implementation efforts. Closing this quantitative reporting gap through datasets outside of the human rights system—with WHO, UNICEF, and the UN already collecting consistent quantitative WASH statistics to assess development outcomes—it will be necessary to understand where these existing development data reflect structure, process, and outcome indicators.<sup>291</sup>

- **Normative Content** – In contrast with the types of information, states have decreased their reporting on the normative content of water and sanitation rights through quantitative data. Prior to the 2008 Reporting Guidelines, availability and accessibility were addressed quantitatively 40.9% and 44.0% of the time, respectively; however, rather than increasing following the Guidelines, quantitative co-occurrence with availability and accessibility fell slightly (to 37.2% and 39.8%, respectively), reflecting a lack of agreement on applicable statistics for human rights reporting.<sup>292</sup> Other normative content codes followed a similar pattern, with very few (and decreasing) instances of quantitative co-occurrence following the Reporting Guidelines, including on acceptability (20.0%) (reflecting the incommensurability of acceptability assessments<sup>293</sup>), quality (31.8%) (reflecting a lack of standard quantitative measures of water safety<sup>294</sup>), and affordability (17.5%) (reflecting a lack of consensus on water pricing<sup>295</sup>).

290. See *supra* notes 288–289 and accompanying text.

291. See Óscar Flores Baquero et al., *Reporting Progress on the Human Right to Water and Sanitation Through JMP and GLAAS*, 5 J. WATER, SANITATION & HYGIENE FOR DEV. 310, 311 (2015) (analyzing “the extent to which JMP-led post-2015 and GLAAS data sources could contribute to monitoring HRWS [human right to water and sanitation] in a broad sense”).

292. See, e.g., DANISH INST. FOR HUMAN RIGHTS, *supra* note 227, at 32 (suggesting specific quantitative indicators to facilitate human rights reporting on the normative content of the rights to water and sanitation).

293. Singh, *supra* note 239 (questioning whether it is possible to quantitatively assess cultural acceptability).

294. Kyle Onda et al., *Global Access to Safe Water: Accounting for Water Quality and the Resulting Impact on MDG Progress*, 9 INT’L J. ENV’T RES. & PUB. HEALTH 880, 881–82 (2012) (discussing conflicting conclusions that can be drawn from different water quality measures).

295. Aoife Nolan, *Putting ESR-Based Budget Analysis into Practice: Addressing the Conceptual Challenges*, HUMAN RIGHTS AND PUBLIC FINANCE: BUDGETS AND THE PROMOTION OF ECONOMIC AND SOCIAL RIGHTS 41, 43 (Aoife Nolan et al. eds., 2013); Murthy, *supra* note 156, at 147 (“While the human right to water and sanitation does not require that services be free, they do need to be affordable

- **Human Rights Principles** – There are limits to what can be quantified, as seen in particular with the central principles that undergird the rights-based approach, wherein there is no trend in quantitative reporting following the 2008 Reporting Guidelines. Despite widespread efforts to quantify human rights principles,<sup>296</sup> these efforts have not translated into increased quantitative reporting on these cross-cutting indicators to the Committee. For example, although a burgeoning array of academic efforts have proposed new measures to quantify equity in water and sanitation,<sup>297</sup> these new indices have never before been employed in state reporting, and there remains rare quantitative co-occurrence with indicators of non-discrimination and equality.<sup>298</sup> Where every human rights principle begins with extremely infrequent quantitative co-occurrence, the slight percentage changes that occur after 2008 (either raising or lowering) may be more a function of the low absolute number of co-occurrences rather than any causal effect of the 2008 Reporting Guidelines.

There does not appear to be any consistent move toward quantification in state reporting with respect to the type of information, the normative content of the right, or the cross-cutting human rights principles. Where states have reported quantitative data with regard to water and sanitation rights, they have often done so in an ad hoc manner, at times providing a table of all relevant statistical information without any context, explanation, or qualitative description.<sup>299</sup> Notwithstanding the Committee's focus on the

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and no one should be denied services for inability to pay. This is a difficult goal to reach and requires that states critically assess their tariff structures.”).

296. See Inga T. Winkler et al., *Treasuring What We Measure and Measuring What We Treasure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, 32 WIS. INT'L L.J. 547, 592 (2014). (“Current limitations in measurement or data collection should not deter the international community from committing to an equality-focused, robust set of goals, targets, and indicators. The boundaries of how data are now disaggregated, as well as what is currently perceived as measurable must be expanded to shed light on persistent inequalities.”).

297. See generally Xiao-jun Wang et al., *Gini Coefficient to Assess Equity in Domestic Water Supply in the Yellow River*, 17 MITIGATION & ADAPTATION STRATEGIES GLOBAL CHANGE 65 (2012) (measuring inequality in the distribution of access to safe water and sanitation); JMP WORKING GRP., *supra* note 211, at 12 (proposing an Index of Equality Betterment in water); see generally Jeanne Luh et al., *Equity in Water and Sanitation: Developing an Index to Measure Progressive Realization of the Human Right*, 216 INT'L J. HYGIENE & ENVTL. HEALTH 662 (2013) (quantifying progressive realization of equity in the human right to water and sanitation).

298. In implementing these quantitative indices of equality in state reports, indicator experts have sought to create incentives (or reduce disincentives) for states to employ these data. Interview with Eibe Riedel, *supra* note 219.

299. E.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Initial Rep.: Mauritania*, ¶ 233,

quantification of state reporting in the 2008 Reporting Guidelines, it appears that states are either unwilling or unable to apply the statistical data necessary to report on their implementation efforts for water and sanitation rights.<sup>300</sup>

Quantitative data reporting seeks to limit subjectivity in the politically fraught assessment of rights realization and allow for more consistent monitoring of state reports;<sup>301</sup> however, given constraints on data availability and data reporting, these statistics on populations have not fully captured the implementation efforts of states or the rights-based reality of individuals.<sup>302</sup> To the extent that certain indicators are not presently amenable to quantitative measurement, the 2008 Reporting Guidelines have had no effect on reporting consistency, and it will be necessary for the Committee to clarify the role of specific quantitative data in state reporting.<sup>303</sup> Through such clarification, the Committee can develop reporting guidelines that specify the quantitative and qualitative information sought in state reports, thereby providing a more consistent evidentiary base for human rights monitoring.

## 2. Housing Rights

Central to the human right to an adequate standard of living,<sup>304</sup> the interrelationships between housing rights and the rights to water and sanitation have long been recognized,<sup>305</sup> and reporting guidelines have been

U.N. Doc. E/C.12/MRT/1 (May 20, 2011) (discussing water and sanitation (in the context of the Right to Housing) only through a table of statistical data without any explanation).

300. In overcoming government reluctance to use information and communication technologies (ICTs) to assess the progressive realization of the human rights to water and sanitation, non-governmental actors have employed “frontier analysis” to compile national-level statistical data on water and sanitation in a WASH Performance Index, comparing water and sanitation outcomes across states and over time to facilitate rights-based accountability for public policy reforms. See Ryan Cronk et al., *The WASH Performance Index Report: Water Access*, THE WATER INST. AT UNC GILLINGS SCH. OF PUB. HEALTH, <http://waterinstitute.unc.edu/wash-performance-index-report/> (last visited Oct. 27, 2015).

301. See Rosga & Satterthwaite, *supra* note 168, at 283 (noting that “numbers, statistics, and the language of quantification generally are seen as uniquely capable of reducing or eliminating subjectivity”).

302. See generally Kevin E. Davis et al., *Indicators as a Technology of Global Governance*, 46 LAW & SOC’Y REV. 71 (2010); see Langford & Fukuda-Parr, *supra* note 281, at 238 (“[Q]uantitative methods will usually not do more than create a *prima facie* argument – the rest is often left to qualitative methods. One needs to avoid the danger of turning exercises of judgment into ones of measurement.”).

303. To clarify the role of data in state reporting, it is possible that the Committee could develop a General Comment devoted to interpreting the differential roles of quantitative and qualitative data in reflecting human rights implementation.

304. See *supra* notes 94–99 and accompanying text.

305. DE ALBUQUERQUE, *supra* note 91, at 38 (“For the realisation of the right to adequate housing,

crucial to state reporting on the water and sanitation implications of inadequate housing.<sup>306</sup> Human rights to water and sanitation were borne of both the right to the highest attainable standard of health (in ICESCR, article 12) and the right to an adequate standard of living (in ICESCR, article 11),<sup>307</sup> and both the 1991 and 2008 Reporting Guidelines request that states report on water and sanitation with regard to article 11's constituent right to adequate housing:

	<b>1991 Reporting Guidelines</b>	<b>2008 Reporting Guidelines</b>
Article 11 Right to Adequate Housing	<u>The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country).</u>	Indicate whether a national survey on homelessness and inadequate housing has been undertaken, as well as its findings, in particular <u>the number of individuals and families who are homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation, and electricity</u> , as well as the number of persons living in over-crowded or structurally unsafe housing.

While the requested water and sanitation indicators under article 11 are largely similar across reporting guidelines, focused on the right to adequate housing, the 2008 Reporting Guidelines additionally request under article 11 a separate section on the Right to Water. However, as states have developed a separate section on the Right to Water, this focused reporting on water and sanitation has come at the expense of state information on the housing conditions necessary for safe drinking water and adequate sanitation.

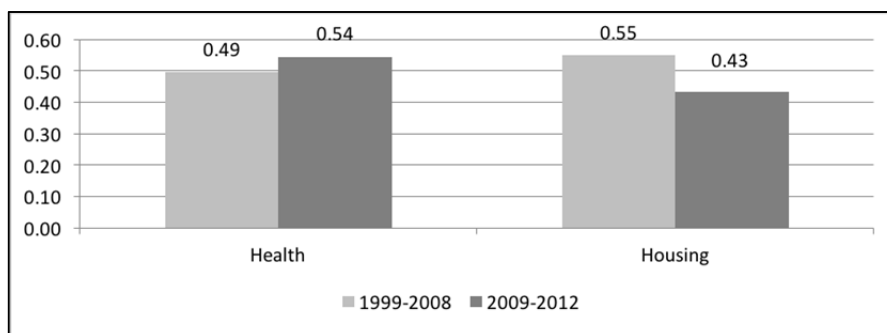
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access to essential services such as water and sanitation is indispensable.” (citing OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS ET AL., FACT SHEET NO. 35: THE RIGHT TO WATER 13 (2010)).

306. As Scott Leckie explained during the development of the Committee’s 1991 Guidelines, “[t]hey [the guidelines] make it easier for the committee to determine a state’s compliance with housing rights and to persuade governments to approach the right to housing and its implementation with more serious and defined commitments.” Scott Leckie, *The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach*, 11 HUM. RTS. Q. 522, 542 (1989).

307. 2008 Reporting Guidelines, *supra* note 82, ¶¶ 42–57.

### Housing and Health: Average Codes per Paragraphs



*Note:* As noted above, this coding per paragraphs accounts for the shortening of reports following the 2008 Reporting Guidelines. *See supra* notes 160–161 and accompanying text.

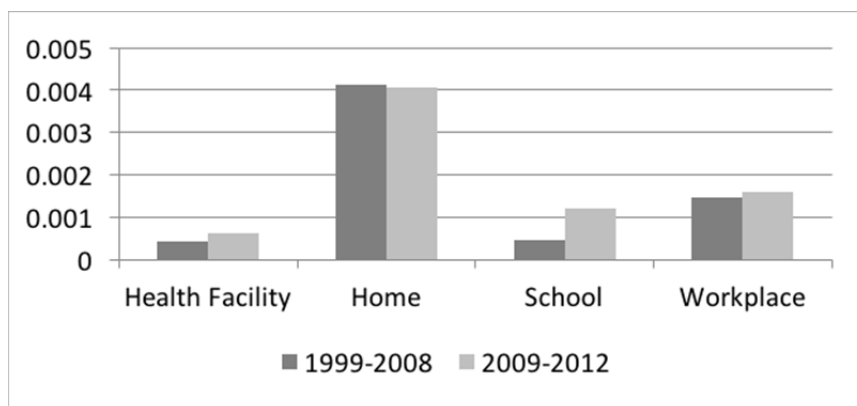
Even as intersectional water and sanitation reporting on health indicators increases modestly (10.0%) following the 2008 Reporting Guidelines, states have reported substantially less water and sanitation information related to housing (-21.0%). This trend holds despite the fact that the 2008 Reporting Guidelines request that states specifically include in their Right to Water section “the percentage of households without access to sufficient and safe water in the dwelling or within its immediate vicinity . . . .”<sup>308</sup> The addition of a distinct Right to Water section has created a “silo effect” in state reports, overshadowing intersectional housing issues and constraining water and sanitation reporting.

This inattention to the right to an adequate standard of living extends to the workplace, failing to address a sphere of life that is increasingly thought to be crucial for assuring realization of the rights to water and sanitation.<sup>309</sup>

308. 2008 Reporting Guidelines, *supra* note 82, ¶ 48(b).

309. *See* DE ALBUQUERQUE, *supra* note 91, at 34, 35 (discussing the role of human rights to water and sanitation in framing building and employment codes); Langford et al., *supra* note 237 (recognizing that “those who are living or working away from their homes, such as at the workplace, in hospitals, prisons or other institutions, where they are not able to take care of their own sanitation needs, the right to sanitation requires that this is made available, to ensure health, privacy and dignity”).

### Spheres of Life: Average Codes per Paragraph



While state reporting on water and sanitation rises with respect to health facilities (46.0%) and schools (170.0%) (reflecting a greater focus on communicable disease control in the 2008 Reporting Guidelines<sup>310</sup>), there is a lessened effect on state reporting for water and sanitation in the home (-1.0%) and workplace (8.0%), spheres of life that will remain crucial to water and sanitation rights in an increasingly urbanized world.<sup>311</sup>

Although the human right to housing has a long and established legal foundation under the right to an adequate standard of living, the Committee's assessment of housing rights has waned as a result of a lack of

310. Compare 1991 Reporting Guidelines, *supra* note 80, art. 12(4)(b) (“[p]opulation access to safe water (please disaggregate urban/rural)”) with 2008 Reporting Guidelines, *supra* note 82, ¶ 57(b) (requesting right to health reporting on state efforts to “prevent, treat and control diseases linked to water and ensure access to adequate sanitation”). Where the vast majority of diseases linked to water are manifested in infants and children, states have recently come to focus on school-based water and hygiene programs to prevent disease. See, e.g., U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights, Third Rep.: Nepal*, ¶ 269, U.N. Doc. E/C.12/NPL/3 (Oct. 29, 2012) (“The GON [Government of Nepal] has introduced school and community led total sanitation programmes across the country, aiming to spread awareness of hygienic practices through social children and communities. The School Sanitation and Hygiene Education Programme is now used in over 1,000 schools, focusing on child-friendly, gender-sensitive and disability friendly water, hygiene and sanitation facilities.”); see also UNICEF, WATER, SANITATION AND HYGIENE (WASH) IN SCHOOLS 3 (2012) (focusing on WASH in schools as a strategy to “fulfil children’s rights to health, education and participation”).

311. Anthony J. McMichael, *The Urban Environment and Health in a World of Increasing Globalization: Issues for Developing Countries*, 78 BULL. WORLD HEALTH ORG. 1117, 1119 (2000) (“Large cities in the least developed countries typically combine the traditional environmental health problems of poverty, particularly respiratory and enteric infections, with those of poor quality housing and unregulated industrialization. Residents therefore are often at risk from diseases and injuries associated with poor sanitation, unsafe drinking-water, dangerous roads, polluted air, indoor air pollution and toxic wastes.”).

consistency in state reporting.<sup>312</sup> Where the right to housing was thought to be complex, requiring application to a wide range of housing needs, the development of the Committee's 1991 Reporting Guidelines brought specificity to this right for the first time.<sup>313</sup> These universal guidelines resulted in growing attention to the right to an adequate standard of living,<sup>314</sup> an attention extended through General Comment 15 to the water and sanitation implications of housing rights.<sup>315</sup> Rather than bringing additional state guidance to reporting on this basic right, the Committee's 2008 Reporting Guidelines obscure housing determinants of safe drinking water and adequate sanitation, focusing states parties on the right to water while diverting states from the water and sanitation implications of inadequate shelter, informal settlements, and insecure land tenure.<sup>316</sup>

Given this inconsistent reporting following the 2008 Reporting Guidelines, it is clear that states parties have not been given sufficiently specific guidance on the content of state reports. While reporting guidelines are presumed to have great influence on state reporting,<sup>317</sup> the CESCR's 2008 Reporting Guidelines appear to have had little effect on the water and sanitation content of state reports, raising questions about the process of

312. Leckie, *supra* note 306, at 525 (concluding that "few attempts have been made to give more substance to this basic right"); *see also* Scott Leckie, *The Human Right to Adequate Housing*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK, *supra* note 3.

313. Leckie, *supra* note 310, at 534 (noting the inadequacy of previous reporting guidelines and arguing that "procedural changes adopted by the committee now provide the opportunity to reexamine its perspective on housing rights and permit a legal determination of its contents that is specific enough to realize housing rights yet broad enough to cope with the holistic nature of these rights").

314. *See generally* Dennis & Stewart, *supra* note 200; Maria Foscarinis, *Advocating for the Human Right to Housing: Notes from the United States*, 30 N.Y.U. REV. L. & SOC. CHANGE 447 (2006); Asbjørn Eide, *Freedom from Need: The Universal Right to an Adequate Standard of Living - Origins, Obstacles and Prospects*, 55 SCAND. STUD. L. 157 (2010).

315. *General Comment 15*, *supra* note 97, ¶ 3 (finding that "[t]he right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival"); *id.* ¶ 16(c) ("No household should be denied the right to water on the grounds of their housing or land status. . .").

316. *See* DE ALBUQUERQUE, *supra* note 251, at 22 ("People living in slums generally have to pay more than those living in formal settlements, to receive unregulated, poor quality services."); *see also* Langford, *supra* note 98, at 278 ("Informal settlements face an additional problem. They are denied the right to connect to public (or private) water systems. Local authorities commonly worry that providing water legitimizes the informal occupation of the land."). To address this gap in attention at the intersection of water and housing rights, the Global Initiative for Economic, Social and Cultural Rights has launched a practitioner's guide to support the human rights-based approach to improving access to water in informal settlements. *See* THE GLOBAL INST. FOR ECON., SOC. & CULTURAL RIGHTS, A HUMAN RIGHTS-BASED APPROACH TO WATER IN INFORMAL SETTLEMENTS (2015) (highlighting examples from Kenya, Brazil and Bangladesh).

317. Gallagher, *supra* note 45, at 307 ("The ability of reporting guidelines to shape reports and to influence the ways in which treaty provisions are interpreted (by both the reporting state and the examining committee) must not be underestimated.").



guideline development and creating an imperative for evaluations of guideline impacts.<sup>318</sup> Ensuring that reporting guidelines are politically feasible, there is a need for states to participate in the development of indicators and for human rights treaty bodies to be more specific about the indicators requested in state reports, providing treaty bodies with a basis to monitor the information in state reports and make consistent comparisons across space and time.

## V. AN IMPERATIVE FOR REPORTING CONSISTENCY THROUGH UNIVERSAL HUMAN RIGHTS INDICATORS

These results provide empirical precision in understanding changes in the implementation of water and sanitation rights, but the content of human rights reports remains insufficient to justify any causal conclusions, either for this study or for human rights accountability. For human rights monitoring to serve its role in facilitating rights-based accountability, state reports to human rights treaty bodies must present consistent indicators that accurately reflect human rights implementation.<sup>319</sup> Where scholars have long expressed concern that states parties report to human rights treaty bodies on a subjective political basis,<sup>320</sup> these concerns with self-reporting are largely confirmed by this CESCR study, with states seen to report positive developments on water and sanitation without critical reflection. Such ad hoc reporting has denied the Committee a basis to assess reported information, monitor universal obligations, and facilitate human rights accountability—both where the reported indicators do not reflect human rights (proving irrelevant to the treaty body’s review) and where states report shifting indicators over time (undercutting the treaty body’s ability to assess progressive realization).<sup>321</sup>

Notwithstanding the trends outlined in these results, there are vast inconsistencies in state reporting that undercut the role of the Committee in

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318. See Benjamin Mason Meier et al., *Examining the Practice of Developing Human Rights Indicators to Facilitate Accountability for the Human Right to Water and Sanitation*, 6 J. HUM. RTS. PRAC. 159, 170 (2014) (“Validated through state consultations, national workshops and participatory feedback—with national human rights institutions bringing together statistical organizations, service providers and civil society—indicator proponents seek to finalize contextually relevant indicators, assure political feasibility of treaty monitoring, and build government capacity for indicator-based reporting.”).

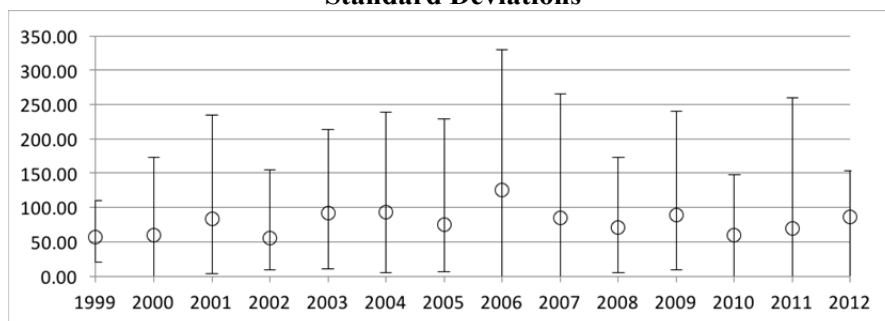
319. See *Guide to Measurement*, *supra* note 184, at 16–20.

320. de Beco, *supra* note 175, at 39 (arguing that “reported violations can be biased or misrepresented by those who handle the data”).

321. See *Rep. on Implementation of Econ., Soc. & Cultural Rights*, *supra* note 174; CTR. FOR ECON. & SOC. RIGHTS., NEW HORIZONS IN ECONOMIC AND SOCIAL RIGHTS MONITORING, SEMINAR REPORT, at 2 (2012) (describing Eibe Riedel’s presentation, which argued that the content of state reports to the CESCR is so deficient as to make the reports “un-criticizable”).

monitoring state implementation of human rights. Examining this variation across state reports, consistently high standard deviation values (ranging from 48.30 in 2002 to 118.23 in 2006) indicate a vast degree of disparity in state water and sanitation reporting each year.<sup>322</sup>

### Average Number of Water and Sanitation Codes Per Report with Standard Deviations



This examination of state reporting to the CESCRC makes clear that the inconsistent content of state reports is insufficient to make causal judgments on human rights implementation for safe drinking water and adequate sanitation. Without the ability to understand cause and effect in human rights implementation efforts, the Committee will be unable to fulfill its potential for human rights treaty monitoring. Monitoring economic, social, and cultural rights seeks to facilitate universal accountability for the progressive realization of rights, comparing progress across countries and within the same country over time; however, such standardized monitoring of human rights implementation requires consistent information in state reports.

Consistent state reporting can guide the policies, programs, and practices of government institutions; structure state reporting and constructive dialogue with treaty bodies; and identify systematic failures within and across states. Through more consistent water and sanitation content in state reports, the Committee could realize greater efficiency in treaty monitoring and effectiveness in implementing rights.<sup>323</sup>

322. Standard deviation is a measure of variance or dispersion around a mean. The standard deviation can be interpreted as a “typical distance” of a value from the mean, and the larger the standard deviation, the more spread out the data. ALAN AGRESTI & BARBARA FINLAY, STATISTICAL METHODS FOR THE SOCIAL SCIENCES 48 (4th ed. 2009). Examining the standard deviations of the number of codes in each year, this research highlights the wide variation in state reporting on human rights to water and sanitation.

323. See MERTUS, *supra* note 57, at 64 (arguing that “[t]reaty reporting and monitoring processes

- **Efficiency** – Where treaty bodies can neither compel the production of state reports nor mandate the content of those reports, consistency would ease the process of state self-reporting. With many states contending with multiple reporting obligations to multiple treaty bodies for multiple rights, leading to what CESCR members have labeled “reporting fatigue,”<sup>324</sup> the simplification of reporting requirements would make more manageable the time and effort necessary for governments to report on water and sanitation. Such streamlining would support the UN’s efforts to strengthen treaty bodies, with the 2014 General Assembly resolution encouraging a more simplified reporting procedure to facilitate a more interactive dialogue on human rights implementation.<sup>325</sup> Given page limitations for state reports, consistent reporting would allow states to hone in on those indicators of water and sanitation most important to CESCR monitoring.<sup>326</sup> This efficiency in monitoring—with more consistent state reports leading to more directed concluding observations—would accommodate limited state capacity for drafting national reports and accepting CESCR recommendations.<sup>327</sup> By facilitating consistency in state reporting on water and sanitation, the Committee could more efficiently carry out its monitoring responsibilities under current budget constraints,<sup>328</sup> providing shorter lists of issues, faster constructive dialogue, and targeted recommendations that are specifically geared toward the implementation of rights.<sup>329</sup>

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are often neither efficient nor effective.”); see also Kälin, *supra* note 20, at 41–71 (defining efficiency and effectiveness in treaty monitoring).

324. See Schrijver, *supra* note 35, at 260; see also MERTUS, *supra* note 57, at 65 (referring to this concept as “treaty fatigue”). In her 2012 report, the High Commissioner recognized that the overwhelming number of reporting obligations (with up to twenty human rights reports due in a single decade) has led many states to shirk reporting obligations or delay filing reports. *Strengthening the United Nations Human Rights Treaty Body System*, *supra* note 26, at 21.

325. G.A. Res. 68/268, *supra* note 17, ¶¶ 1–2.

326. See Egan, *supra* note 36, at 13 (noting the prevalence of states that exceed page limitations in treaty body reporting, resulting in an overrun in translation costs).

327. See U.N. High Commissioner for Human Rights, Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System (Dec. 19, 2009), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9642&> (last visited Oct. 25, 2015) (expressing concern that states often receive an “unrealistic” number of implementation recommendations).

328. See *supra* note 34 and accompanying text.

329. Ctr. for Human Rights, Univ. of Pretoria, *Pretoria Statement on the Strengthening and Reform of the U.N. Human Rights Treaty Body System*, ¶ 9.1 (June 20–21, 2011) (seeking treaty body concluding observations that are “targeted, specific, measurable, achievable and timebound”); G.A. Res. 68/268, *supra* note 17, ¶ 6 (encouraging “the human rights treaty bodies to adopt short, focused,

- **Effectiveness** – Consistent reporting would additionally allow for more systematic monitoring of human rights implementation over time, giving treaty bodies the ability to assess state reports on the basis of comparable information and to follow-up on issues raised in previous dialogues with states parties. Absent a consistent basis to evaluate the progressive realization of human rights, human rights scholars have turned to minimalist approaches for assessing rights realization, either looking to “minimum core” obligations on all states<sup>330</sup> or developing a “violations approach” to assessing rights realization.<sup>331</sup> Monitoring the progressive realization of water and sanitation rights will require consistent reporting across monitoring cycles.<sup>332</sup> With different individuals preparing each state report and different CESCR members performing each periodic review, consistency in reporting would provide for greater informational transparency (to facilitate external scrutiny)<sup>333</sup> and objectivity (in describing the “factual situation” in the country).<sup>334</sup> Where reports are targeted to the norms of the right, with consistent reporting allowing an assessment of rates of change over time, the Committee can develop better knowledge of the country situation, understand obstacles to implementation, and thereby

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and concrete concluding observations, including the recommendations therein, that reflect the dialogue with the relevant state party”).

330. See generally Katharine G. Young, *The Minimum Core of Economic and Social Rights: A Concept in Search of Content*, 33 YALE J. INT’L L. 113 (2008).

331. See generally Audrey Chapman, *A “Violations Approach” for Monitoring the International Covenant on Economic, Social and Cultural Rights*, 18 HUM. RTS. Q. 23 (1996).

332. See Eibe Riedel, *New Bearings to the State Reporting Procedure: Practical Ways to Operationalize Economic, Social and Cultural Rights – the Example of the Right to Health*, in PRAXISHANDBUCH UNO 345, 349 (S. von Schorlemer ed., 2003) (discussing how indicators become necessary for assessing rights subject to the principle of progressive realization); see generally Urfan Khaliq & Robin Churchill, *The Protection of Economic and Social Rights: A Particular Challenge?*, in UN HUMAN RIGHTS TREATY BODIES, *supra* note 8, at 199, 211–12 (reviewing arguments that the “progressive nature” of economic, social, and cultural rights necessitates the employment of indicators to monitor progress over time).

333. Such data transparency would provide a basis for NGOs to challenge specific data in state reports rather than presenting alternative data and asking the Committee to assess the most appropriate indicators on a case-by-case basis. See Clapham, *supra* note 23, at 185.

334. See Kälin, *supra* note 20, at 60–61 (“State reports provide a good basis for the examination of a country situation if they—in accordance with requirement set out in the reporting guidelines—describe not only the legal but also the factual situation, contain sufficient statistical information, inform the relevant committee about actual human rights problems and indicate measures the government is taking or envisaging to address such problems.”).

issue achievable recommendations that are more “precise and realistic.”<sup>335</sup>

In standardizing reporting based upon both the international norms of human rights and the national practices of state governments, reporting consistency can best be assured through the development of universal indicators for CESCER reporting on the human rights to water and sanitation.

As a basis for accountability under human rights law, the human rights practice community has embraced universal indicators as part of a larger drive for scientific assessment of state obligations.<sup>336</sup> Such indicators identify specific information reflective of rights realization.<sup>337</sup> In reporting consistent information to human rights treaty bodies, these indicators are seen to give meaning to the monitoring process, lessening the arbitrariness of narrative-based reporting, framing reports in accordance with standards applicable to all states, disclosing information to allow external scrutiny, and contextualizing reports to structure constructive dialogue and concluding observations.<sup>338</sup>

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335. *Id.* at 63–65 (arguing that more precise information would lead to more effective recommendations); see also Suerie Moon, *Meaningful Technology Transfer to LDCs: A Proposal for a Monitoring Mechanism for TRIPS Article 66.2*, at 7 (Int. Ctr. Trade & Sustainable Dev., Policy Brief No. 9, Apr. 2011), <http://www.ictsd.org/themes/innovation-and-ip/research/meaningful-technology-transfer-to-ldcs-a-proposal-for-a-monitoring> (noting that consistent and uniform reporting on the TRIPS Agreement would facilitate the detection of trends over time and “would make monitoring efforts both more feasible and meaningful”).

336. de Beco, *supra* note 175, at 25–26 (noting a growing interest in indicator-based reporting to human rights treaty bodies); see also Heymann et al., *supra* note 138, at 428 (arguing in the case of children’s rights that “[t]he use of indicators, available and comparable across all States Parties, would allow observers, whether national policymakers, the CRC Committee, or civil society, to readily identify where particular countries and the world as a whole stand on meeting their obligations to children”). But see Paul Greedy, *Reasons to Be Cautious About Evidence and Evaluation: Rights-Based Approaches to Development and the Emerging Culture of Evaluation*, 1 J. HUM. RTS. PRAC. 380, 399 (2009) (suggesting that “it is imperative that human rights work is driven by a set of strategic and legal/moral priorities, not by evaluation targets and associated funding incentives”); Langford & Fukuda-Parr, *supra* note 281, at 234 (arguing that any move toward mandating a “one-size-fits-all policy prescription” may prove damaging to distinct national institutions and may diminish policy innovations in meeting human rights goals).

337. OHCHR 2006 *Rep. on Indicators*, *supra* note 170, ¶ 7 (defining indicators to encompass “[s]pecific information on the state or condition of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights”).

338. Rosga & Satterthwaite, *supra* note 168, at 254–55 (“Rights indicators . . . are understood to have a variety of advantages: they render complex data simple and easy to understand; they can be designed to demonstrate compliance with obligations, fulfillment of rights, and government efforts toward these goals; and they are capable of capturing progress over time and across countries.”).

The Committee has worked with the Office of the High Commissioner and various UN special rapporteurs and independent experts to seek a methodologically sound basis for developing specific indicators to monitor the progressive realization of economic, social, and cultural rights.<sup>339</sup> Reviewing past efforts to develop indicators for monitoring human rights implementation,<sup>340</sup> the Office of the High Commissioner has developed a conceptual and methodological framework to translate human rights standards into universal indicators, putting forward an interconnected list of illustrative indicators on a wide range of civil, cultural, economic, political, and social rights.<sup>341</sup> Based upon this systematic practice of identifying indicators, the Office of the High Commissioner has begun a process with the CESCR to develop universal indicators for the human rights to water and sanitation.<sup>342</sup>

These universal indicators are increasingly seen as critical to monitoring human rights for safe drinking water and adequate sanitation;<sup>343</sup> however, in order to facilitate accountability for state implementation of these rights, indicators must meet twin goals: to reflect realization of human rights and to prove practical for state reporting. These empirical results on the content of state reports provide a basis to frame reporting consistency through universal indicators that are reflective of the content of the right and feasible for state reporting practice.

For indicators to reflect realization of the rights to water and sanitation, it will be necessary, based upon the results of this research on the content of state reports, for stakeholders to develop indicators that identify: (a) the implementation of state obligations, (b) the development of human rights norms, and (c) the specificity of reporting guidelines:

**(a) Conceptualize Structure, Process, and Outcome Indicators  
(Part IV.A.1) –** Rather than focusing solely on water and sanitation outcomes, such indicators must seek to identify universal

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339. *OHCHR 2006 Rep. on Indicators*, *supra* note 170, ¶ 1; *see also* Sital Kalantry et al., *Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*, 32 HUM. RTS. Q. 253, 257 (“Such indicators offer a promising solution with respect to rights that may be provided incrementally over time.” (citing *OHCHR 2006 Rep. on Indicators*, *supra* note 170, ¶ 2)).

345. *See OHCHR 2008 Rep. on Indicators*, *supra* note 133, annex I.

341. *Id.*

342. *See* Interview with Catarina de Albuquerque, *supra* note 86; *see also* Meier et al., *supra* note 318, at 171–75 (concluding that there is a need for evidence-based indicators for the human rights to water and sanitation).

343. *See* WHO/UNICEF JOINT MONITORING PROGRAM FOR WATER SUPPLY & SANITATION (JMP), REPORT OF THE FIRST CONSULTATION ON POST-2015 MONITORING OF DRINKING-WATER AND SANITATION 30–31 (2011), [http://www.wssinfo.org/fileadmin/user\\_upload/resources/Report-on-WHO-UNICEF-Berlin-Consultation-May-2011.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/Report-on-WHO-UNICEF-Berlin-Consultation-May-2011.pdf) [hereinafter JMP REPORT OF THE FIRST CONSULTATION].

underlying structures and processes necessary to implement rights to water and sanitation, linking these structure, process, and outcome indicators in a way that will highlight the causal process that ties together state commitments, efforts, and results;<sup>344</sup>

- (b) **Frame Norms for Assessing the Availability, Accessibility, Acceptability, Affordability, and Quality of Water and Sanitation (Part IV.B.1)** – In creating universal indicators of water and sanitation affordability, it will be necessary to conceptualize affordability under privatized water and sanitation systems, to define the maximum available resources for water and sanitation, and to connect individual affordability with international assistance;<sup>345</sup> and
- (c) **Specify Quantitative and Qualitative Indicators for State Reporting (Part IV.C.1)** – Applying existing development data to monitor human rights implementation, it becomes clear that stakeholders must identify statistical indicators reflective of human rights realization and, given the inherent limitations of quantification, specify universal qualitative indicators to monitor incommensurable human rights principles.<sup>346</sup>

To assure that state reports reflect realization of the rights to water and sanitation, the Committee should confirm that each reference to safe

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344. ROAF ET AL., *supra* note 206, at 18 (“Within a human rights approach, indicators will not focus just on outcomes, for example, how many latrines have been built, or how many people have access to an improved water source, but more particularly on inputs, on policies that target the most vulnerable populations, and which examine how budgets target those lacking in basic services. These will be measured by structural and process indicators, measuring States’ intentions, their policies and their financial inputs.”); *see also* Baquero et al., *supra* note 291, at 310–11.

345. *See* DE ALBUQUERQUE & ROAF, *supra* note 134, at 95 (“International transfers are an important source of funding for many developing countries, particularly for the capital-intensive networked water and sewerage systems. Where insufficient funds for operation and maintenance, rehabilitation or extension of water and sanitation services are raised through user fees and national, regional or local budgets, international sources of financing may be also required for these purposes. These come most commonly from international development banks or bilateral aid, but in some countries significant resources come from international agencies and non-governmental organisations.”).

346. *See* Kälin, *supra* note 20, at 46 (“In countries with weak statistical services, it is particularly challenging and time-consuming to put together the statistical information requested by many of the treaty bodies.” (citing *2008 Reporting Guidelines*, *supra* note 82, ¶ 3(g)); Felner, *supra* note 285, at 408 (“Neither the Covenant, nor the Committee, provide specific guidance or benchmarks for judging whether a state is making sufficient progress given its levels of available resources or for assessing the sufficiency of resources made available to realize rights. This makes it difficult to assess if governments have met this obligation, particularly since such assessment requires a methodology that integrates statistical indicators and quantitative tools that could track progress over time and assess resource availability.”).

drinking water and adequate sanitation include specific indicators from each of these universal categories.

Beyond these central elements of (a) state implementation, (b) human rights norms, and (c) reporting guidelines, however, there is a lack of clarity in state reports, and additional specialized indicators will be necessary to reflect realization of the:

- (a) **Rights-Based Approach (Part IV.A.2)** – With scant attention to human rights principles for non-discrimination and equality, accountability, participation, and sustainability in state reports, it is essential to clarify which indicators should be included in Core Reports and which should be addressed by the Committee, determining the specific information necessary to monitor a rights-based approach to water and sanitation.<sup>347</sup>
- (b) **Public Health Impacts (Part IV.B.2)** – It will be necessary to elucidate the specific public health impacts of inadequate water and sanitation, which will require revitalizing Committee relationships with the World Health Organization (the institution best positioned to advise the Committee on these issues) to clarify the intersectional obligations between the right to health and the rights to water and sanitation;<sup>348</sup> and
- (c) **Housing Rights (Part IV.C.2)** – Where the relationship between housing rights and water and sanitation rights remains ambiguous, the Committee must specify housing indicators of the rights to water and sanitation, making it clear that a separate reporting section on the right to water should not come at the expense of

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347. See generally JMP REPORT OF THE FIRST CONSULTATION, *supra* note 343; e.g., Urooj Quezon Amjad et al., *Rights-Based Indicators Regarding Non-Discrimination and Equity in Access to Water and Sanitation*, J. WATER, SANITATION & HYGIENE FOR DEV. 182, 182–87 (2013) (describing interdisciplinary efforts to develop indicators of non-discrimination and equality under the human rights to water and sanitation).

348. See generally *Water, Health and Human Rights*, WORLD HEALTH ORG. (Feb. 2001), [http://www.who.int/water\\_sanitation\\_health/en/humanrights.html](http://www.who.int/water_sanitation_health/en/humanrights.html); WORLD HEALTH ORG., *supra* note 259; see also Anna F.S. Russell, *International Organizations and Human Rights: Realizing, Resisting or Repackaging the Right to Water?*, 9 J. HUM. RTS. 1, 5, 14 (2010); Interview with Eibe Riedel, *supra* note 219 (noting the World Health Organization's role in developing General Comment 15); Telephone Interview with Cristina Bianchessi, Technical Officer, World Health Organization (Aug. 25, 2013); cf. Coomans, *supra* note 77, at 303, 317 (recognizing that "cooperation between the Committee and the specialized agencies has been quite poor" and arguing that the Committee should strengthen its work with the UN specialized agencies). To facilitate WHO participation in the work of human rights treaty bodies, the WHO secretariat is currently developing a handbook to facilitate staff interactions with human rights treaty body mechanisms.



mainstreaming water and sanitation throughout state reports on economic, social, and cultural rights.<sup>349</sup>

Given a lack of standard reporting on these indicators, reforms will be necessary to facilitate consistent reporting on such specialized information reflective of the progressive realization of the rights to water and sanitation.

The development of human rights indicators can facilitate the translation of human rights into the reported information that the Committee needs to monitor implementation, yet accountability for safe drinking water and adequate sanitation will additionally require that these indicators prove practical for state reporting to human rights treaty bodies. Rather than having the indicator development process cloistered within the UN human rights system, previous studies have shown that indicators are most likely to be applied in state reporting where they are developed in collaboration with both subject matter experts (across disciplines, sectors, and countries) and national governments (supporting political buy-in and government capacity-building for implementation).<sup>350</sup> Such an inclusive process seeks to navigate a tension between the ideal of global indicator development and the practicality of national indicator application, highlighting the advantages for states parties in providing a focused report in accordance with treaty body expectations and then “pilot testing” indicators to assure that they will be accepted by national governments.<sup>351</sup> In supporting states parties in reporting universal indicators that would be comparable over time and across countries, the Committee can build from its robust monitoring history to facilitate accountability for the rights to water and sanitation.<sup>352</sup>

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349. See Langford, *supra* note 98.

350. See Meier et al., *supra* note 318, at 175 (concluding, in analyzing the process of developing of human rights indicators for water and sanitation, that “there is a need for consultations with an encompassing group of national governments, human rights institutions and civil society representatives to assure that the final indicators are technically reliable, logistically feasible and politically acceptable”); cf. Part IV.B (documenting the significantly larger impact of the 2010 General Assembly Resolution (drafted by states) over the Committee’s 2002 General Comment 15 (drafted within the UN human rights system)).

351. Interview with Nicolas Fasel, Technical Officer, United Nations High Commission for Human Rights, in Geneva, Switzerland (May 24, 2012) (detailing the indicator development process). See generally *Guide to Measurement*, *supra* note 184 (developing a guide to make the development of human rights indicators more accessible in policymaking, illustrative of application, and amenable to implementation).

352. See Dabney Evans & Megan Price, *Measure for Measure: Utilizing Legal Norms and Health Data in Measuring the Right to Health*, in *METHODS OF HUMAN RIGHTS RESEARCH*, *supra* note 122, 111, 133 (concluding that “such primitive attempts [to prepare indicators] are necessary in order to develop a system of human rights measurement that is both scientifically sound and efficacious”). Supporting the next intergovernmental review of the human rights treaty body system in 2020, this

## CONCLUSION

National implementation of human rights obligations is the first step in the causal chain linking developments in international law to outcomes for individual lives. With state human rights reports providing a means to monitor this implementation, it is crucial that human rights treaty bodies frame these state reports in a way that will facilitate accountability for rights realization. Universal indicators are necessary to clarify state implementation obligations and frame state human rights reports.

With this study providing an empirical, cross-national research base on the content of state reports, additional research will be necessary to understand the accountability effects of treaty body monitoring, looking to the:

- (1) Process of developing state reports;
- (2) Relationship between state reports with concluding observations;  
and
- (3) Effects of international monitoring on national practice.

While such research would benefit from both (a) detailed interviews with key stakeholders to examine the communications between individual states parties and human rights treaty bodies and (b) ethnographic research to examine national practices to implement treaty obligations, this initial coding of human rights reports provides a complementary method to understand the global impacts of human right treaty monitoring on human rights accountability.

Highlighting the utility of analytic coding as a methodological basis for social scientific examination of human rights implementation, this research method has broad applicability to a wide range of implementation mechanisms, including legislative reforms, human rights litigation, and political advocacy. Such evidence-based implementation research, grounded in interdisciplinary empirical analysis, provides a basis by which academic initiatives can assist in making human rights a reality.